



**George Pataki, Governor**  
**Randy A. Daniels, Secretary of State**

## Planning Board Powers & Duties



- General City Law §27
- Town Law §271
- Village Law §7-718

**Planning Commissions**  
**General Municipal Law**  
**§234 through §239-a**

## Board Membership

- Number of Members
  - Five or Seven
- Terms of Office
- Qualifications for Membership
  - Age, Citizenship, Residency
- Removal Reasons
  - Cause, Attendance, Training



## Appointment of Alternate Members

State Law Now Provides for Alternates to be Appointed in the Event of a Conflict of Interest

- Governing Board adopts a local law or ordinance allowing for alternates
- Alternates are appointed in the same way regular members are appointed
- Terms are established by the Governing Board
- For an alternate to serve in the event of absences or for other reasons, the local law must supersede state law



**Default  
Approval**

## Appointment of Chairman

- Appointment by the Town Board or Village Mayor with approval of Trustees
- If no Chairman is appointed, the Planning Board should select a Chairman
  - It's a good idea to elect a vice-chairman as well
- Presides at meetings & hearings

### Chairman May Also be Authorized to Perform the Following Duties

- Supervise agenda preparation
- Liaison with Elected Board
- Signs official documents
- Supervises filing of documents

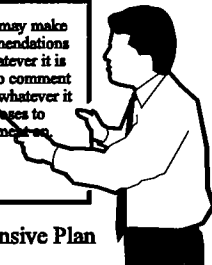
## What does a planning board do?

# Advise & Regulate

## What does the planning board advise about?

- Subdivision regulations
- Zoning changes
- Site plan regulations
- Capital budgets
- Recreation studies
- Variance requests
- Development of the Comprehensive Plan

It also may make recommendations on whatever it is asked to comment on and whatever it chooses to comment on.



## How Direct Appeals for Area Variances Involve Planning Boards



**Example:**  
Variance to allow less frontage than zoning requires for houses on cul de sac

Where a proposed subdivision plat, site plan, or special use permit application contains one or more features which do not comply with the physical or dimensional restrictions in the zoning regulations, application may be made by the applicant to the ZBA for an area variance.

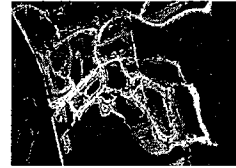
For Subdivisions, the ZBA shall request a written recommendation from the planning board.

### When can a planning board regulate?

- When Subdivision Regulations have been adopted
- When the Planning Board is authorized to by the elected board.

### Subdivision Review

A subdivision is the division of a parcel of land into a number of lots, blocks or sites, with or without streets, for the purpose of sale, transfer of ownership, or development



- General City Law §32 & §33
- Town Law §276 & §277
- Village Law §7-728 & §7-730

### “Major” or “Minor” Subdivisions

Subdivisions may be defined and delineated by local regulation as either “major” or “minor”



#### Typical Threshold Items

- the number of proposed lots
- use of new or existing streets
- extension of municipal facilities
- size of the proposed lots
- transfer of land between adjacent parcels

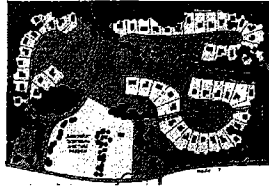
### Purposes

- Subdivision Review regulates design and improvements
  - Lot configuration
  - Landscaping
  - Drainage
  - Street Pattern
  - Service Access
  - Streets and Roads
  - Utility Installation
  - Sidewalks & Curbs
- Subdivision Review does not:
  - Establish a minimum lot size
  - Negate the possibility of needing Health Department approval
  - Control the uses which may be placed upon property
  - Regulate style or design
  - Change dimensional requirements

## Cluster or "Conservation" Subdivisions

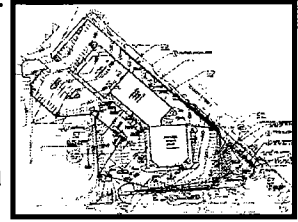
Enables and encourages flexibility of design and development so as to preserve natural and scenic qualities of open lands.

- Need specific authorization to review cluster subdivision plats
- Zoning identifies districts where cluster is allowed
- Planning board may be authorized to mandate cluster



## Site Plan Review

A rendering, drawing, or sketch prepared to specifications and containing necessary elements, as set forth in the applicable zoning ordinance or local law, which shows the arrangement, layout and design of the proposed use of a single parcel of land as shown on said plan.



- General City Law §27-a
- Town Law §274-a
- Village Law §7-725-a

Goal: Good Design

## What uses are subject to plan review?



Certain uses throughout the community



In certain zoning districts



In certain geographic areas

## What should our local site plan review regulations say?

- Specify the land uses which require site plan approval
- Indicate which board will review site plans, and who will enforce the conditions of approval
- Specify submission requirements
- List local procedures, such as the need for a public hearing
- List elements the board can review

What are some *examples* of the types of elements that the board can be authorized to review?



Only Elements specified by the Governing Board by law or ordinance

- Adjacent uses
- Location/dimension of buildings
- Screening & landscaping
- Architectural features
- Proposed grades & contours
- Utilities
- Sewage & storm drainage
- Parking, access, traffic
- Lighting, signage

## Special Use Permit



Permitted by zoning, subject to requirements

An authorization to use land in a way permitted by zoning, subject to requirements designed to assure that the proposed use is in harmony with zoning and will not adversely affect the neighborhood if the requirements are met.

## Other Regulatory Tools Common to Planning Boards

- Sign Permits
- Historic Preservation
- Architectural Review

## Getting through the Application Process

- Establish a starting point
  - ZEO or Municipal Clerk or Board Clerk?
- Develop good forms
  - Have SEQRA EAF available
- Have clear submission requirements
  - Use a check off list
- If county review is required, send county copies of everything submitted.
  - You can ask the applicant to provide extra copies
- Make sure time periods or deadlines comply with state law and are clear to all parties

## Comprehensive Plan

## What is a Comprehensive Plan?

- An expression of a municipality's goals and recommended action to achieve those goals.
- An outline for orderly growth, providing continued guidance for decision-making
- A document which focuses on immediate and long-range protection, enhancement, growth and development of the municipality.
- Now also defined in statutes

- Master Plan
- Land Use Plan
- Comprehensive Master Plan

## 1999 Survey of Local Governments

### Percent of Communities with Written Comprehensive Plans

Cities	84%
Towns	58%
Villages	58%
All	59%

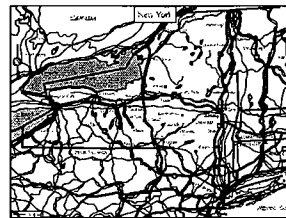
### Percent of Communities with Zoning

Cities	100%
Towns	69%
Villages	88%
All	77%

Source: Legislative Commission on Rural Resources

## Municipal Differences by County

Counties in which a high number of municipalities do not have written comprehensive plans:



- Allegany, Cattaraugus, Chenango, Chautauqua, Steuben, Schuyler
- Oneida, Oswego, Otsego
- Nassau, Suffolk

## The Planning Board's Role in the Development of the Comprehensive Plan

The Governing Board of a Municipality is the Board which has ultimate responsibility for the adoption or amendment of a Comprehensive Plan



- As a board, prepare a proposed comprehensive plan; or
- Individual members may serve on a "special board" that prepares the proposed comprehensive plan; or
- The board may simply advise the municipal governing board as that board prepares a comprehensive plan

## Why can't just the planning board adopt the comprehensive plan?

The Value of Planning comes from the municipality's willingness to implement the plan by:

- Amending Land Use Regulations
- Developing Design Guidelines
- Budgeting for Capital Improvements
- Applying for Appropriate State, Federal and Privately Funded Programs

Private Actions will also play a large role in implementing the plan

Action by the Governing Board is needed to implement the plan.

## Comprehensive Plan Implementation

The Value of Planning comes from the municipality's willingness to implement the plan by:

- Amending Land Use Regulations
- Developing Design Guidelines
- Budgeting for Capital Improvements
- Applying for Appropriate State, Federal and Privately Funded Programs

Private Actions will also play a large role in implementing the plan

## Meetings of the Planning Board

## Quorum

The number of members that must be present for business to be conducted legally. Must be at least a majority of the full membership of the board



Full Membership includes Absences or Vacancies

The size of the board is established by the governing board. For a Planning Board, it should be 5 or 7 members.

## A Planning Board May Not Meet Behind "Closed Doors" to Discuss the Merits of an Application

Planning Boards must discuss applications and other board business at meetings open to the public



A "Work Session", "Agenda Meeting" or "Site Visit" is a meeting subject to the OML if a quorum of the members have planned to gather to discuss public business

An "Executive Session" may only be held for one of the eight permissible reasons under the Open Meetings Law.

## When may the Public be Excluded?

An "Executive Session" may only be held for one of the eight permissible reasons under the Open Meetings Law.



For more information, attend the session on conducting meetings later in the evening.

Also, see the Department of State publication, "Your Right to Know."

## Board Procedures

- Handling public questions at meetings
- Handling public comments at hearings
- Controlling the recording of sessions
- The need for non-owner applicants to show the owner's consent



Consider Adopting Written Board Policies



## Board Procedures

In order to be binding, board procedures must be adopted by the governing board by local law or ordinance. They may cover a variety of issues. For example:

- Duties of officers, committees
- Calling meetings, agendas, public input
- Voting
- Referrals
- Setting hearings, notice, conduct
- Minutes
- Signature on official documents

### VOTING

- How to count an abstention
- Does a motion require a second for that motion to be brought to a vote?
- Recusal procedures

## Making Legally Defensible Land Use Decisions

## SEQRA Timing

Do not hold a public hearing until the SEQRA determination of significance has been made (if SEQRA applies)

If a positive declaration, the formal public hearing should not be held until after a draft environmental impact statement has been accepted by the planning board as complete.

### Examples of Actions Subject to SEQRA

- Site plans, special use permits, and subdivision applications are subject to the State Environmental Quality Review Act unless the action is classified as a Type II action under the DEC regulations.
- Available at [www.dec.state.ny.us/website/dcs/index.html](http://www.dec.state.ny.us/website/dcs/index.html)

## Referral to the County

Some Applications Must be Referred to the County Planning Agency

Refer it if it Applies to Real Property within 500 Feet of:

- Municipal Boundary
- State or County Park/Rec Area
- State or County Road
- County-Owned Stream/Drainage Channel
- State or County Land on Which a Public Building is Located
- Boundary of a Farm Operation that is in a State Agricultural District (except for area variances)



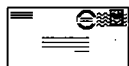
LOCAL



COUNTY

## Tips for Board Members

- 'Ex parte' communication should not be concealed or disregarded (example: a phone call or letter from the applicant)
- Don't make statements that you would not be happy to see in print or that could be interpreted wrongly when intonation or nonverbal cues are missing. Example: Sarcasm "You bet we're going to deny you..."
- Don't make a conclusory statement ("I'm in favor of the project") before all the facts are heard



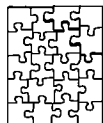
## Drafting the Findings

- Findings describe the reasons for the denial or approval of an application, and may also support why a condition was imposed.
- Findings are an analysis which applies law to facts, leading to conclusions. Findings should be able to support a decision if it is challenged in court.



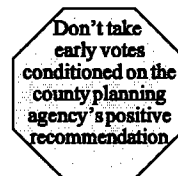
## What's in a Record?

- Newspaper notices
- Transcripts and minutes of meetings
- The application and supporting
- Testimony at public hearings
- Written submissions during the public comment period
- Expert opinion submitted orally or in written form
- Personal observations and knowledge of board members that are entered into the record



## Timing of Vote

- Check the statutory time frames. In subdivision review, if a planning board fails to act in the allotted time, default approval can occur.
- Do not vote until either the County Planning Agency has made its recommendation or 30 days have passed, whichever is earlier



## Decisions Must be Filed

### What can constitute a decision?

- The minutes which contain a record of the vote
- A document that records the motion passed
- Other?

At the local level, determine officially what action constitutes "Filing with the Municipal Clerk"

## Decisions of the Planning Board



Planning Board decisions are appealed to the Supreme Court

Planning Board decisions are not appealed to the Zoning Board of Appeals



## Continuing Education Credits

### Attorneys:

This course has been approved for 2 hours of Continuing Legal Education (CLE) credits towards Professional Practice requirements. See the instructors for the paperwork

### Code Enforcement Officers:

This course has been approved for 1 hour Area E and 1 hour Area G (2 hours total).

Course Number - 49-5002

In-Service Number - 680000-1002-1010





# **Site Development Plan Review**

---

**JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES**

**NEW YORK STATE  
George E. Pataki  
Governor**

**DEPARTMENT OF STATE  
Randy A. Daniels  
Secretary of State**

NEW YORK STATE DEPARTMENT OF STATE  
DIVISION OF LOCAL GOVERNMENT SERVICES  
41 STATE STREET  
ALBANY, NEW YORK 12231

(518)473-3355  
(518)474-6572  
<http://www.dos.state.ny.us>

---

Publication Date: August 1998  
Reprint Date: October 2001

---

# Site review procedure and guidelines

## Introduction

The site development review process is one of several means of plan implementation that communities may utilize. It is commonly considered supplemental to other land development guidance controls.

Since most land in New York State is in private ownership, municipalities have been delegated a variety of powers to enact land development controls. The most common of these are the powers of zoning and subdivision control, which are exercises of the police power. Zoning enables communities to regulate land uses and population densities based on comprehensive land development planning. Subdivision control allows communities to effect satisfactory physical design and site improvement of privately owned lands to be subdivided, usually for residential development purposes.

An aspect of development control frequently neglected by communities in the past concerns the improvement of lands intended for nonresidential or multi-family housing purposes. In many of these cases, the lands are to be developed and remain in single ownership and, therefore, do not fall within the scope of the subdivision review powers. To overcome this gap in their development review capabilities, an increasing number of municipalities have added site review components, applicable to an array of uses, to their development regulations. Initially introduced in urban areas, the concept has more recently spread to other parts of the State. Most communities which have adopted site development plan review procedures have done so within the framework of their zoning regulations.

The site development plan specifies the present characteristics of a particular parcel of land and its surroundings and describes intended activities and their potential impact on the community. The terms "site plan" and "site development plan" are interchangeable. The latter is generally used in this paper since it defines the intent of the "plan" and the review process more accurately.

Site development plans have two functions. First, they illustrate the intended design, arrangement and uses of the land to be improved. Second, they describe the

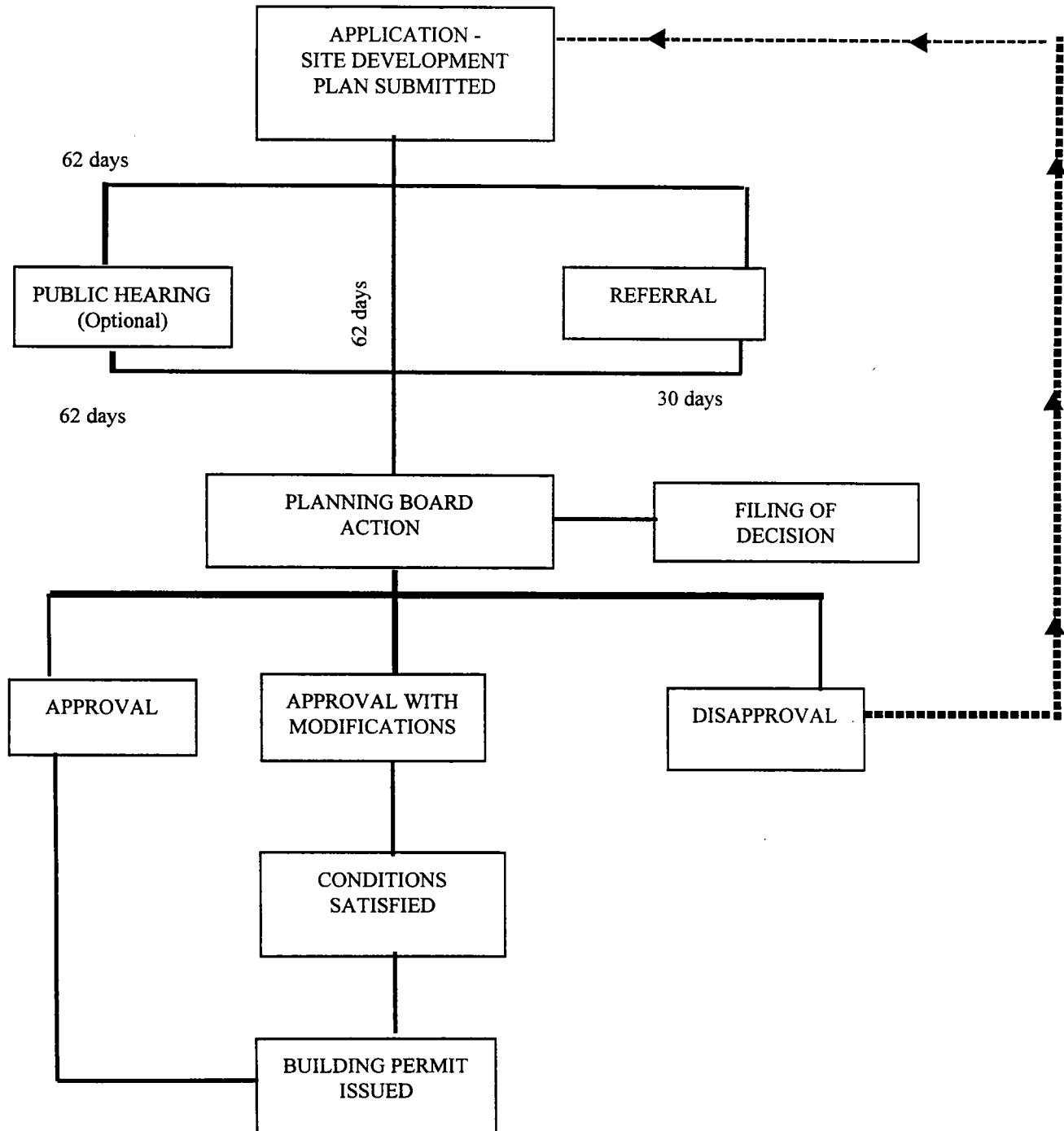
proposal's physical, social and economic effects on the community. The plans may be in either or both narrative and graphic form, as appropriate. Information on factors such as the following may be the subject of concern in the site development review process: means of access, parking, landscaping, buffers, architectural features, location of structures, impact on adjacent land uses and other elements related to the health, safety and general welfare of the community.

Site plan reviews can include both small and large scale proposals ranging from gas stations, drive-in facilities and office buildings to complex ones such as shopping centers, apartment developments and planned unit developments. In the case of a drive-in facility such as a fast food restaurant, bank or neighborhood convenience retailer, the community might be most concerned with providing adequate access without disrupting traffic flow on the adjacent road or with minimizing visual confusion as is often produced by advertising signs. If, on the other hand, the municipality is faced with a large scale proposal, such as a shopping center, other factors may be more important. These include impacts on the surrounding natural environment, transportation system and land uses.

Within the site, the prime concerns might include minimizing ecological disturbances, provision of separate parking and loading arrangements, ensuring pedestrian safety and the aesthetic relationship of the proposed structures to the site. Thus, the site development review process permits municipalities to analyze development proposals in terms of their impacts on local growth and the need for facilities and services.

Until recently, the State's enabling legislation did not provide for planning boards in the site development plan approval process except in an advisory capacity. The communities which used the process were, therefore, legally limited to designating the zoning board of appeals or the legislative body for decision-making purposes. In 1976, however, the State Legislature amended the General City, Town and Village laws to make it possible for planning boards to take final action on proposed site development plans. Those same site plan enabling statutes were again extensively revised, effective for towns and villages in 1993, and for cities in 1994, so that any municipal board may be designated by the governing

**Figure 1**  
**Basic Site Development Plan**  
**Review Procedure**





body to review and approve site plans. (General City Law, section 27-a; Town Law, section 274-a; Village Law, section 7-725-a. The text of the law can be found in its entirety in Appendix A.)

The framework within which this delegation of authority is cast may be critical to its impartial and efficient implementation. The power to approve site development plans may be delegated to a planning board or other board within the context of a zoning ordinance or local law or as a separate local law. Throughout this publication, the planning board will continue to be referred to as the board which reviews site plans. It should, however, be understood that this merely reflects the fact that planning boards are the bodies most commonly vested with such authority. In fact, any other board may now be given site plan approval power.

Several problems are inherent in the use of site development review without zoning regulations. First, this approach has not been tested in any litigation and a court would carefully scrutinize such a local law to assess whether adequate constraints could be placed upon the exercise of this power without zoning regulations. Second, the planning board would be required to assess the desirability of a particular site development plan without any commitment by the municipality as to the character of the surrounding property. Lastly, the employment of site development plan review should be considered a safety mechanism within the context of applying the community's comprehensive land use regulation. Communities which currently have no zoning controls should therefore give careful consideration to postponing the enactment of site development review regulations until they can be integrated within the comprehensive control scheme that zoning regulations provide.

The site development aspects of the zoning ordinance or local law must specify the uses for which approval is needed and the components to be included in the plans. Specific review criteria should be stated in the zoning regulations. However, if the planning board is granted the review power, criteria could be stated generally in the ordinance or local law, supplemented with detailed rules and regulations of the planning board. Such rules and regulations would be developed and adopted by the planning board and approved by the local legislative body.

Before drafting the site development plan provisions, the

municipality must decide how broad an array of uses will be subject to review. This can be accomplished in several manners. First, the land uses to be subject to review could be identified by zoning district within the general use provisions. Second, they could be identified by zoning district within the supplemental regulations or a special article applicable to site development plan review. Third, certain uses could be subject to review regardless of the zoning district or location. Reviews might also be tied to areas having specialized use restrictions such as flood hazard, coastal or historic preservation zones.

The review procedures and submission requirements for site development plan reviews can be provided for in a completely separate article of the zoning ordinance or local law. Alternatively, they can be made a part of the supplemental regulations article.

Public hearings are not required in the site development plan review process except where the zoning board of appeals is designated as the final site development plan approval body, in which case such a hearing is mandated by state law. A municipality, however, has the option of requiring a hearing. Hearings could be required for all site development plan applications or only for certain types if the latter are defined in the regulations. A public hearing is beneficial because it allows interested parties, besides applicants and local officials, to voice opinions on the proposal.

The statutes allow for prior approval of a proposal by a planning board under a site development plan approval procedure to be conditional for the issuance of a building permit.

The enabling laws offer additional flexibility in the selection of a review board and a procedure most appropriate to a community's individual needs and resources. (Prior to their original enactment in 1976, a community, through its zoning ordinance or local law, could designate either the local legislative body or the zoning board of appeals to grant final approval of site development plan proposals.)

If the local legislative body, such as the town or village board, retains approval power, it is free to develop any justifiable approval procedure and standards. (See *Lemir Reality Corp. v. Larkin*, 1962, 11 N.Y.2d 20; *Green Point Savings Bank v. Board of Zoning Appeals*, 1939, 281 N.Y.534.)

If the zoning board of appeals is delegated approval power, the board is limited to using the procedure established for it by the State's planning and zoning enabling legislation. (General City Law, section 81-a, effective July 1, 1994; Town Law, section 267-a; Village Law, section 7-712-a.)

If the planning board (or other authorized board) is delegated approval power, this action is taken pursuant to the site plan enabling statutes, which also establish the procedure to be used for approval. For example, where authorization to control site development approvals is given to the planning board in accordance with the recently modified General City, Town and Village laws, the maximum time between receipt of the proposal and the board's decision is specified in the statutes.

Several significant changes have been made to the revised statutes effective in 1993 in towns and villages, and in 1994 in cities. First, provision is made for a direct application to the zoning board of appeals in the event an area variance is needed from a strict dimensional requirement of the zoning ordinance, without the applicant's first having to receive a decision from the enforcement official. Second, provision is made for the planning board to require a set aside of recreational land or cash in lieu thereof, similar to the procedure allowed for many years in subdivision applications. Third, the statutes expressly reference the need to comply with both county, metropolitan or regional referral under the General Municipal Law, as well as with State Environmental Quality Review Act procedures under Article 8 of the Environmental Conservation Law.

## Review procedure

The review procedure described in this publication is focused primarily on utilizing the site plan enabling sections of Town, Village and General City Laws as its basis.

These statutes have been designed primarily to incorporate the review procedure in a community's existing or proposed zoning ordinance or local law. They enable planning boards to approve site development proposals and to set up a single-phase approval procedure which can be divided into submittal of application, optional hearing and decision components. This is shown in Figure 1. Other steps can be added if it is determined that they can provide better safeguards to

the community and enhance local interaction with the applicant. However, additional steps would have to be informal in nature (i.e., optional with the applicant) if they are administered by the local planning board in accordance with the Town, Village or General City Law.

Alternatively, formalization of a mandatory multi-phase procedure is possible if the site plan review regulations are adopted by local law in accordance with the Municipal Home Rule Law. Thus, a number of legal options are available to institute site development plan review either within the framework of zoning controls or as a supplement to them.

The statutes make it possible to develop a single-phase review procedure that merely requires submittal of an application containing the necessary information to permit a municipality to make a rational decision on a site development plan proposal. On the other hand, a multi-phase procedure can be developed allowing for a maximum of interaction between the applicant and the community. The latter approach, though it may be partially informal, is more likely to enable the site development plan to satisfy the objectives of all concerned parties. It is the preferred approach for the review of most larger site development proposals.

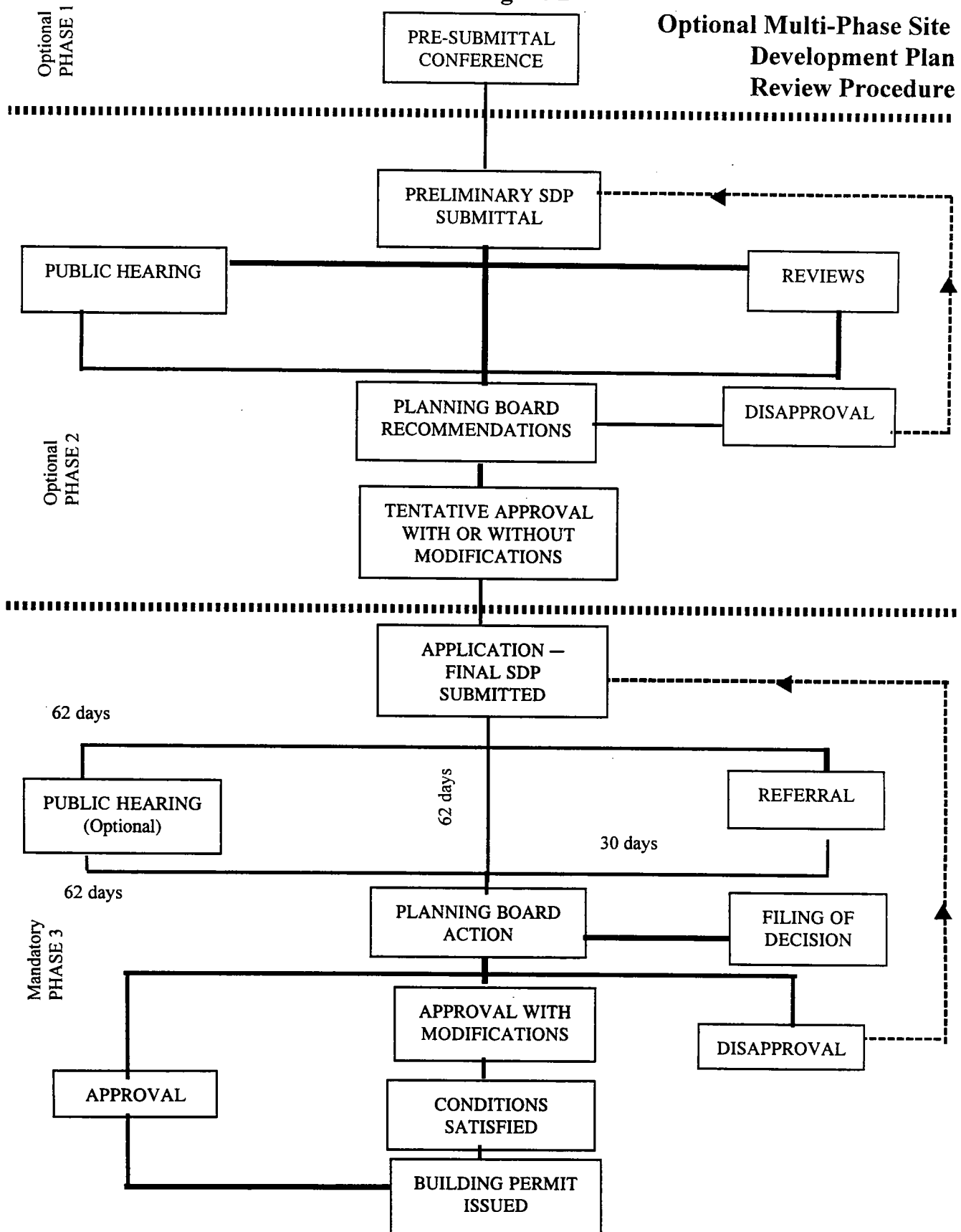
It should be noted, though, that the lengthy time span occasioned by a multi-phase review procedure can often be costly and otherwise harmful, especially to a small developer. This is especially true in communities using a three-phase procedure.

A two- or three-phase procedure, similar to that commonly employed for reviewing subdivision plats, could be used for reviewing proposed site development plans. If the planning board is charged with approving subdivision plats as well as site development plans, the use of parallel procedures may be justified for a number of reasons. They include the relative ease of following similar steps and the potential for conducting simultaneous reviews and hearings in cases of large scale proposals such as planned unit developments. Figure 2 shows the multi-phase procedure.

If a three-phase approval process is utilized, it would include presubmission, preliminary submission and final submission phases. Each of the steps are time consuming by themselves. In addition to them, the lag time between phases must also be considered. The inclusion of a preliminary submission phase, therefore,

**Figure 2**

**Optional Multi-Phase Site  
Development Plan  
Review Procedure**



should only be considered for large scale proposals. The community would have to establish appropriate benchmark criteria for this purpose in its regulations.

Many communities in the State appear to be settling upon the two-phase procedure as the most satisfactory approach to site development plan review, namely, the presubmission and final submission phases. This is an appropriate choice since it provides a means for ensuring adequate safeguards for the community and also protects the developer from excessive money and time investments prior to site plan approval.

It should be reemphasized that the enabling legislation provides no authority to the local government to mandate a presubmission conference or a preliminary approval phase. However, the review procedure should be tailored to the regulatory needs of the community and each step of the recommended procedure, from presubmission conference to final approval, should be given careful consideration at the time the controls are drafted. The procedure to be followed should be clear so that all parties understand it.

Appendix B is a site development plan review procedure that can be adapted for use as part of a zoning ordinance or local law. The regulations in Appendix C are illustrative of a separate site development plan local law.

### **Presubmission conference**

The purpose of the presubmission conference is to give both the municipality and the applicant an opportunity to gain a better perspective on the ramifications of the proposal. This step does not constitute formal submission of an application. It is beneficial to both parties because the community will gain knowledge of the developer's intent and the developer will learn his responsibilities before either is committed to significant outlays of time and money.

At this conference the applicant should provide the reviewing board with basic data regarding the proposal. At a minimum, this should include a map showing the important existing natural and man-made features in and around the site and a sketch plan showing the major features of the proposed development. This information can then form the basis with which the municipality can advise the applicant on the next steps required to gain final site development plan approval and of the necessary data that will have to be provided with the application.

### **Preliminary site development plan phase**

If preliminary as well as final site development plan phases are used, the former would be more important because it is here that the more substantive reviews and recommendations should be made. It also gives the applicant-developer added assurance that the final submission will be adequate for board consideration and rapid approval.

The preliminary review phase would also be considered informal in the overall review process, but it can be desirable because it gives the municipality and the developer greater opportunity to reach agreement on areas of potential conflict. The steps followed for performance of the preliminary site development plan review phase should be similar to those detailed below describing the final review process. This phase should consist of (1) application submission, (2) municipal review, (3) optional hearing and (4) local government decision.

### **Site development plan phase (final)**

This phase begins the formal review process and contains the steps included in the previously described state enabling legislation.

The reviewing board should set a maximum time limit between the presubmission conference and the next phase. Three to six months is a reasonable time frame for this purpose. The municipality should have the option to require resubmission of the requirements for the previous phase if more time has elapsed than specified in the regulations, especially if it is found that significant changes have occurred in the community during the interim. A similar time frame should also be established between the preliminary and final phases, if applicable.

**Application.** The phase begins with the submission of an application for site development plan approval from the developer. It should be made in writing, preferably on a form provided for this purpose by the municipality. Appendix D is a sample application form.

The application should be accompanied by information about the proposal, including legal data, impact on its environs, natural features, existing development and infrastructure and the site development proposal. The specific types of information to be provided by the

applicant should be identified as submission requirements in the municipality's site development plan regulations. Much of the data can be provided in mapped form. If variations from the submission requirements are to be granted, they can be mutually agreed upon by the applicant and the locality at the presubmission conference or other initial contact.

Certain submission requirements such as a record of the application and approval status of all necessary state and county permits, an estimated project construction schedule and additional specifications for materials of the proposed site improvements should also be included with the final application submission, but are generally unnecessary for the preliminary phase. Typical submission requirements are discussed below.

The application could be submitted to the clerk of the reviewing board or other designated local official as provided for in the regulations. It will be the task of the enforcement officer to certify that the proposal meets the requirements of the zoning regulations other than those tied specifically to the site development plan section.

**Expert assistance.** The members of a lay board may not have sufficient time or expertise to perform a comprehensive site development plan review analysis. If the community does not have a professional planning staff, the board or commission will have to look elsewhere for technical assistance. If the municipality employs a professional planning staff, the staff should conduct the technical aspects of the basic site development plan evaluation. This type of review can also make use of expert resources such as legal, engineering and environmental specialists. As with other types of reviews, the municipality should avail itself of assistance from its county or regional planning agency, as appropriate. Where there is no professional government planning aid available, recourse to a private consultant should be considered. All comments and recommendations should be made in writing to the designated reviewing authority.

The submission requirements cover much of the data base upon which the proposed site development plan is reviewed. It is most important that the community has a completed and up-to-date comprehensive development plan and a land capability analysis that provides data on development limitations, critical areas and unique features.

The expenses incurred by the applicant at this stage to provide the needed information further justifies the presubmission contact since he will gain prior knowledge of the local agency's requirements. The community should not have to request additional data from the developer unless special site problems are discovered subsequent to the initial submission.

**Referral.** The approval of a proposed site development plan constitutes a special authorization within the framework of local zoning regulations. The application is therefore subject to referral by the municipality to the appropriate county or regional planning agency in accordance with the requirements of sections 239-l and 239-m of the General Municipal Law, prior to final action. If, however, a hearing is required, such referral must be made at least 10 days prior to the hearing.

**Public hearing.** A public hearing may either be required by the applicable regulations, or even if not required, the planning board may exercise its discretion to hold a hearing on any particular application. In any case, the planning board and its experts should have completed their review of the application prior to holding the public hearing. The hearing is advantageous because it allows the public a formal opportunity to state its views. The planning board will find that the hearing can be a means of providing more information and perspectives on the probable effects of the proposal. Residents and owners of nearby properties often have intimate knowledge of existing conditions which may be vital to the proposed site development concept and they may be able to suggest design or other modifications concerning the proposal which may not have been recognized by others.

**Decision.** The next step is for the local governmental reviewing authority to reach a decision on the site development plan proposal. By this stage, the board should have developed a broad basis for making a decision which should include the information provided with the application, the recommendations of various expert reviewers and the views of affected residents and the public at large.

The statutes which authorize legislative bodies to grant the planning boards power to take final action on site development plan proposals stipulate a maximum interval of 62 days between submission of an application for final approval and a decision. If a public hearing is required by the regulations, however, then the hearing must be held within 62 days of receipt of the application,

and a decision must be rendered within 62 days following the hearing. Notice of the hearing must be published in a newspaper of general circulation at least five days in advance.

The board must approve, approve with modifications or disapprove the proposal within the specified time. The board's decision must be filed with the municipal clerk within five business days, and a copy mailed to the applicant. If the board fails to act within the prescribed time, or where any person is aggrieved by the board's decision, the aggrieved party may apply to the State Supreme Court for review under Article 78 of the Civil Practice Law and Rules. It should be remembered that an approval with modifications is not a "suspended" approval. No further action is required by the planning board; failure to abide by the plan as modified should, however, subject the applicant to enforcement penalties.

The planning board may require the developer to guarantee completion of public improvements such as roadways and landscaping within a reasonable time. This can be enforced through the posting of a performance bond or similar means of assurance if provided for in the zoning ordinance or local law. If the developer fails to properly carry out the improvements prior to the expiration of the bond, the municipality should be able to take foreclosure action. The guarantee can be required only if it is included in the site development plan ordinance or local law.

If a preliminary phase is included in the municipality's review process, board action for this phase should be *tentative approval*, *tentative approval with modifications* or *disapproval*. If approval or approval with modifications is tentatively given, the next step will be submission of a final application, including the necessary documentation for final approval. In this case, the board's modifications should be satisfied in the final application. Disapproval will require the resubmission of a preliminary application if the applicant desires further consideration of the plan.

When both preliminary and final approval phases are utilized by the municipality, the latter serves to resolve residual disagreements between the applicant and the locality and also to assure that any required modifications from the preliminary phase have been satisfied. The most substantive and detailed technical review of the proposal should have occurred during the preliminary phase. Thus, the final approval phase can be

viewed as a check on the tentatively approved preliminary site development plan. The board must determine that the proposal is in substantial agreement with the previous submission and that all required modifications have been incorporated. New information should be thoroughly reviewed and analyzed to determine its acceptability and compliance with the regulations.

## Submission requirements

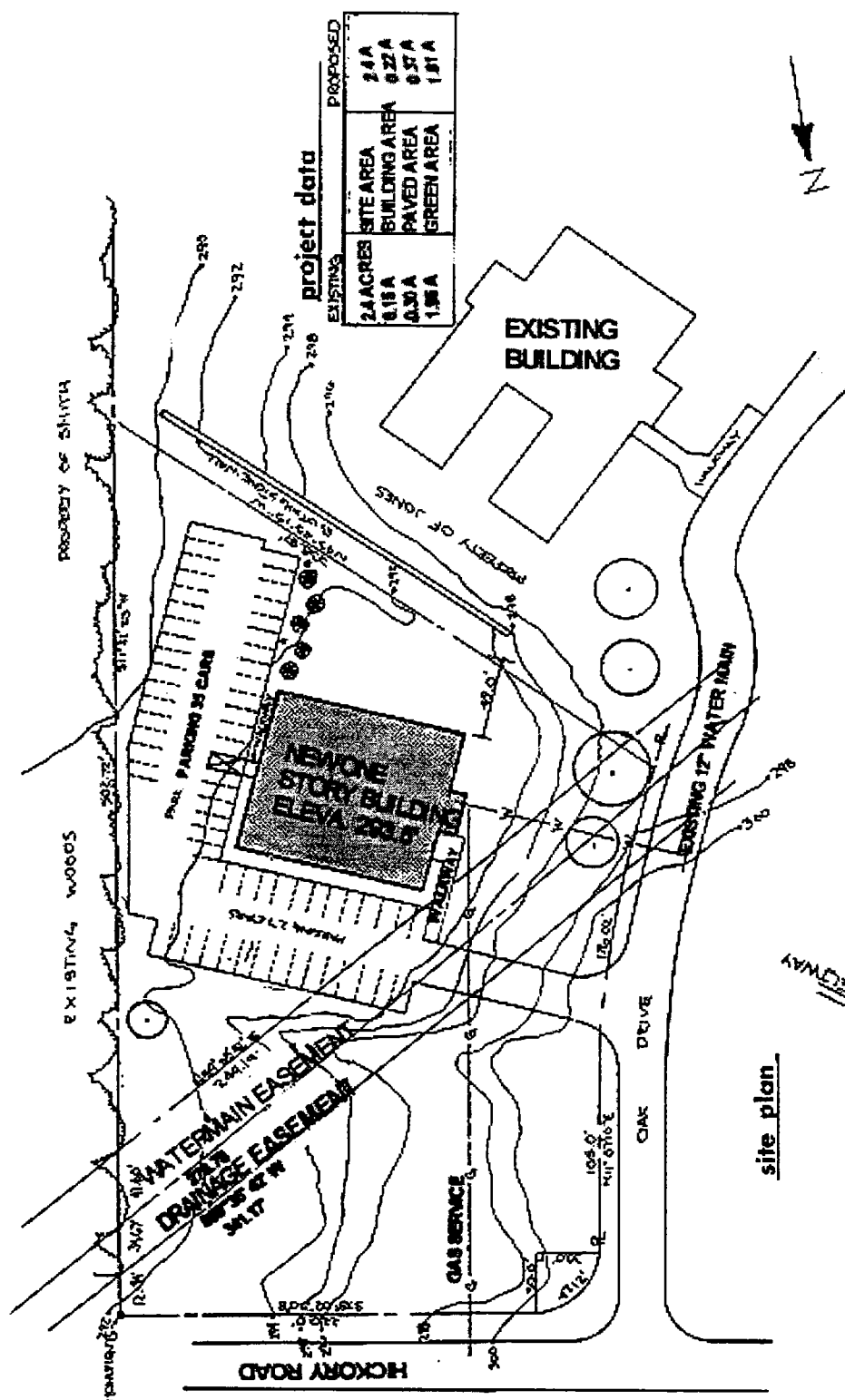
Local officials involved in the review of proposed site development plans should be very familiar with the subject of their review, namely, the characteristics of the site and its impact on the surrounding area. The reviewing agency, enforcement officer and other local officials should have information easily available to help them evaluate a proposal. This material could include aerial photographs, engineering data and various maps showing topography, soils, wetlands and other features of the site. Such information could be consolidated, to produce a land capability map -- a helpful tool to assist the review process.

By living and working close to a particular site, the local officials may also have acquired additional "seat of the pants" knowledge about their surroundings to guide them in the evaluation process. This type of information is valuable, but to assure that a basic level of information is available to all those reviewing and evaluating a proposed site development plan, the applicant should provide the reviewing agency with a satisfactory basis for making its recommendations and reaching a final decision. To guide the applicant, site development plan review process materials should contain a list of submission requirements.

The site development plan map should be prepared by a qualified professional such as a land planner, architect, landscape architect, civil engineer or other similarly skilled person. The plan should include those elements deemed appropriate for the proposed development. An Illustrative Site Development Plan map is shown in Figure 3.

State law allows local regulations to specify the site development plan components which must be submitted for approval. These components can be categorized generally as: (1) legal data, (2) impact on the environs, (3) natural features, (4) existing man-made features, and (5) proposed development. The ordinance or local law

<div style="display: flex; justify-content: space-between;"> <div> <p>REVISIONS</p> <p>DATE NAME</p> </div> <div> <p><b>SITE PLAN</b></p> <p><b>ACME COMMERCIAL</b></p> <p><b>OAK ROAD, ANYWHERE, NY</b></p> </div> <div> </div> </div>	
<p>DATE:</p> <p>FEBRUARY 7, 1983</p>	<p>CUSTOM ENGINEERS</p> <p>OAK ROAD, ANYWHERE, NY</p>



can identify the submission requirements in either general or specific terms. If they are stated in general terms, the detailed review requirements can be spelled out in the regulations promulgated by the planning board.

The waiver of certain submission requirements is possible. However, in order for the planning board to waive any of the requirements listed in the regulations, the ordinance or local law should include criteria for granting a waiver.

The reviewing agency should develop a checklist in accordance with its plan submission requirements for the purpose of making certain that all components of the application have been received. The checklist can be broadened to include other information, such as a procedural history of the proposal so that its status can be easily determined. Appendix E is a sample checklist.

All the submission requirements listed below should be included in both the preliminary and final site development review phases. The few that should be in only the final phase are identified as such.

### **Legal data**

1. Name and address of applicant and authorization of owner if different from applicant.
2. Name and address of owners(s) of record, if different from applicant.
3. Name and address of person or firm preparing the plan and map.
4. Ownership intentions, such as purchase options.
5. Current zoning classification of property, including exact zoning boundary if in more than one district.
6. Property boundary line plotted to scale. Distances, angles and area should be shown.
7. North arrow, scale and date.
8. Locations, widths, elevations and names of existing and proposed adjacent streets.
9. Property lines and names of owners of adjoining parcels.
10. Location, width and purpose of all existing and proposed easements, set-backs, reservations and areas dedicated to public use within and adjoining the property.
11. Description of all existing deed restrictions or covenants applying to the property.
12. Record of the application and approval status of all necessary state and county permits. (Final

only.)

Another element, necessary to determine conformity with the intent of the regulations, is the identification of any state or county permits required for execution of the project.

### **Impact of proposal on environs**

1. Relationship to adjacent and nearby land uses, both public and private.
2. Relationship to existing and proposed traffic patterns.
3. Relationship to existing and projected water supply, sewage disposal and similar service capabilities.
4. Relationship to the community's ability to provide adequate recreation, education, fire protection and similar facilities and services to its residents.
5. Visual compatibility with surroundings.
6. Effect on air and water quality standards applicable primarily to industrial site development plans.
7. Effect on energy consumption and conservation. Draft Environmental Impact Statement (DEIS) and Environmental Impact Statement (EIS) will be required if the reviewing agency deems the proposal to be significant pursuant to the State Environmental Quality Review Act (SEQRA).

### **Natural features**

1. Geologic features, such as depth to bedrock and the location of rock outcrops.
2. Topographic features, including a map showing existing contour intervals of no more than five feet. Two-foot contour intervals should be required if the topography is relatively flat. Areas of steep slopes should be delineated as necessary.
3. Vegetative cover, including existing wooded areas, significant isolated trees and similar features.
4. Soil characteristics, such as load bearing capacity and drainage capacity.
5. Hydrologic features should include drainage and runoff patterns, flood hazard areas, wetlands and depth to groundwater.

### **Existing development and infrastructure**

1. Location and dimensions of major buildings and



- structures.
2. Location and width of roads and paths, including site access.
3. Location, size and flow direction of sewers, water supply lines and culverts. Major electric, gas and telephone lines and appurtenances should also be shown.
4. Location of other existing development and uses, including parking and loading areas, fences, trees and landscaping.

### **Proposed development**

1. Grading and drainage plan showing proposed topography at appropriate contour intervals. This information can be combined with the map of existing topography if it can be clearly depicted.
2. Location, proposed use and height of buildings and other structures, such as retaining walls, fences, outdoor storage tanks, air conditioning units and waste disposal units.
3. Location, proposed use, design and construction materials of improvements not requiring structures, such as parking, loading, and outdoor storage areas.
4. Location and arrangement of site access and egress, including all paths for pedestrian and vehicular travel within the site. Information should include profiles and cross-sections of roadways and sidewalks showing grades, widths and location and size of utility lines.
5. Location and size of water and sewer lines and appurtenances. Any means of water supply or sewage disposal other than extensions of existing systems should be described, including location, design and construction materials.
6. Location, design and construction materials of all energy distribution facilities, including electric, gas and solar energy.
7. Location, size and design of all outdoor lighting facilities and public address systems.
8. Location, size, design and construction materials of all outdoor signs.
9. General landscaping plan and planting schedule, including the treatment of buffer areas and the location and types of trees to be planted.
10. Estimated project construction schedule with possible phasing plan for large projects. (Final only).
11. Additional specifications for materials.
12. Performance bond, amount, completion schedule,

public improvements covered, inspection and bond approval.

## **Review standards**

The setting of criteria upon which the community can judge the merits of proposals submitted for review are necessary to reduce the possibility of arbitrary decisions and to maintain good will between the developer and the community. The site development plan regulations should, therefore, include standards as the basis for judging the merits of all proposals sent to it for review and action. The criteria can be contained in either an exclusive site development plan article or in the general or supplemental use regulations of the zoning ordinance or local law.

The standards chosen for evaluating a proposal should be specific enough to assure compliance with the regulations, but be flexible enough to allow the reviewing agency and the developer some discretion in the ultimate design and construction of the project. All factors being reviewed should, therefore, be subject to evaluation by the use of either strict numerical standards or more discretionary performance standards.

The local comprehensive development plan, based on a land capabilities analysis and achievable goals and objectives, should be the basis for setting the numerical and performance standards. Certain elements of a site proposal, such as the amount of open space and the number of needed parking spaces, can be quantified, while others, such as architectural features and ecological disturbances, are most subjective. It should not be assumed, however, that the ability to set numerical standards means that it will be practical to use them in all cases.

The determination of the mix of numerical and the more flexible performance standards should be based in part on local desires, but it should also be a function of the technical review capability available to the community. For instance, a rural community lacking financial or professional resources to review the site development plan may need relatively detailed standards for use by the lay reviewing agency, while a municipality having qualified planning assistance available, could draft more flexible criteria. This assumes that discretionary judgments can be made more readily by trained personnel (whether local staff, county planning agency or

consultant services) than by lay persons.

## **Development considerations**

The purpose of the review process is to facilitate evaluation of a development proposal within the framework of a local government's goals. The previously described submission requirements present the basic information needs and the review standards set the parameters for determining the adequacy of the proposal.

The task of specifying development considerations is complex. The factors to be reviewed and the relative weights given to them will vary from site to site. This is because no two parcels of land are exactly alike, and each proposed use introduces a different set of circumstances into the evaluation equation. The reviewing agency will, for example, give higher priority to analyzing the effects of commercial traffic, topography and noise for an industrial development proposal than it will for a residential one. Pedestrian safety, neighborhood facilities and services would be more important considerations in the latter case. Thus every proposed development will have to be judged by the reviewing agency on its own merits within the parameters of local aspirations.

The number of development factors to be evaluated can be large. Therefore, it is necessary to determine the important elements early in the process, such as at the presubmission conference. Then, upon submission, the community will be ready to undertake the task of evaluating the site development plan proposal.

To assist the responsible agency, Figure 4 presents an array of frequently encountered review considerations. Although not all of the factors will apply in all cases, the table should serve as a guide to help ensure equitable and realistic reviews.

It was previously noted that the factors to be evaluated by the reviewing agency will vary for different categories of proposed uses. Descriptions of development considerations for apartment/condominium developments and drive-in facilities have, therefore, been included in Appendix F as examples to highlight some of the differences between them. These descriptions should aid in introducing the reader to the mechanics of reviewing these types of proposals. They should also provide a guide for analyzing the costs and benefits of other use proposals.

**Figure 4: Typical Development Considerations**

<b><u>Regional and local environs</u></b>	<b><u>Natural features</u></b>	<b><u>Design and aesthetics</u></b>
Relationship to comprehensive plan	Geology	Site Usage
Compatibility with surroundings	Topography	- density
Accessibility	Soil characteristics	- geometrics
- pedestrian	Vegetation	Structures
- automobile	Micro-climate	- relationship to site
- trucking	Wildlife	- plans
- public transportation	Open space	- elevations
Economic impact	Surface drainage	-functional adequacy
Fiscal impact	Erosion	Architectural features
Environmental impact	Ground waters	Signs
- air, water, noise	Wetlands	Landscaping
Facilities and services availability	Flood hazard areas	Recreation areas
Visual compatibility		Incidentals
Historic and archaeologic considerations	<b><u>Circulation</u></b>	- fencing
	Vehicular	- buffer strips
	- ingress and egress	
	- road layout	<b><u>Miscellaneous</u></b>
	- parking areas	Construction specifications
	- loading areas	Utilities
	- traffic control	Maintenance
	Pedestrian	Staging of development
	- walkways	
	- safety	

## **Appendix A**

### **Town Law, section 274-a\* (as revised effective July 26, 1994)**

#### **§274-a. Site plan review.**

1. Definition of site plan. As used in this section the term "site plan" shall mean a rendering, drawing, or sketch prepared to specifications and containing necessary elements, as set forth in the applicable zoning ordinance or local law, which shows the arrangement, layout and design of the proposed use of a single parcel of land as shown on said plan. Plats showing lots, blocks or sites which are subject to review pursuant to authority provided for the review of subdivisions under section two hundred seventy-six of this article shall continue to be subject to such review and shall not be subject to review as site plans under this section.

#### **2. Approval of site plans.**

(a) The town board may, as part of a zoning ordinance or local law adopted pursuant to this article or other enabling law, authorize the planning board or such other administrative body that it shall so designate, to review and approve, approve with modifications or disapprove site plans prepared to specifications set forth in the ordinance or local law and/or in regulations of such authorized board. Site plans shall show the arrangement, layout and design of the proposed use of the land on said plan. The ordinance or local law shall specify the land uses that require site plan approval and the elements to be included on plans submitted for approval. The required site plan elements which are included in the zoning ordinance or local law may include, where appropriate, those related to parking, means of access, screening, signs, landscaping, architectural features, local and dimensions of buildings, adjacent land uses and physical features meant to protect adjacent land uses as well as any additional elements specified by the town board in such zoning ordinance or local law.

(b) When an authorization to approve site plans is granted by the town board pursuant to this section, the terms thereof may condition the issuance of a building permit upon such approval.

3. Application for area variance. Notwithstanding any provision of law to the contrary, where a proposed site plan contains one or more features which do not comply

with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section two hundred sixty-seven-b of this article, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

4. Conditions attached to the approval of site plans. The authorized board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to a proposed site plan. Upon its approval of said site plan, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the town.

5. Waiver of requirements. The town board may further empower the authorized board to, when reasonable, waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in the ordinance or local law adopted pursuant to this section, may be exercised in the event any such requirements are found not to be requisite in the interest of the public health, safety or general welfare or inappropriate to a particular site plan.

6. Reservation of parkland on site plans containing residential units.

(a) Before such authorized board may approve a site plan containing residential units, such site plan shall also show, when required by such board, a park or parks suitably located for playground or other recreational purposes.

(b) Land for park, playground or other recreational purposes may not be required until the authorized board has made a finding that a proper case exists for requiring that a park or parks be suitably located for playgrounds or other recreational purposes within the town. Such findings shall include an evaluation of the present and anticipated future needs for park and recreational facilities in the town based on projected population

---

\*Substantively the same as Village Law, section 7-725-a, effective July 26, 1994, and General City Law, section 30-a, effective July 1, 1994.

growth to which the particular site plan will contribute.

(c) In the event the authorized board makes a finding pursuant to paragraph (b) of this subdivision that the proposed site plan presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that a suitable park or parks of adequate size to meet the requirement cannot be properly located on such site plan, the authorized board may require a sum of money in lieu thereof to be established by the town board. In making such determination of suitability, the board shall assess the size and suitability of lands shown on the site plan which could be possible locations for park or recreational facilities, as well as practical factors including whether there is a need for additional facilities in the immediate neighborhood. Any monies required by the authorized board in lieu of land for park, playground or other recreational purposes, pursuant to the provisions of this section, shall be deposited into a trust fund to be used by the town exclusively for park, playground or other recreational purposes, including the acquisition of property.

(d) Notwithstanding the foregoing provisions of this subdivision, if the land included in a site plan under review is a portion of a subdivision plat which has been reviewed and approved pursuant to section two hundred seventy-six of this article, the authorized board shall credit the applicant for any land set aside or money donated in lieu thereof under such subdivision plat approval. In the event of resubdivision of such plat, nothing shall preclude the additional reservation of parkland or money donated in lieu thereof.

7. Public hearing and decision on site plans. In the event a public hearing is required by ordinance or local law adopted by the town board, the authorized board shall conduct a public hearing within sixty-two days from the day an application is received on any matter referred to it under this section. The authorized board shall mail notice of said hearing to the applicant at least ten days before said hearing and shall give public notice of said hearing in a newspaper of general circulation in the town at least five days prior to the date thereof and shall make a decision on the application within sixty-two days after such hearing, or after the day the application is received if no hearing has been held. The time within which the authorized board must render its decision may be extended by mutual consent of the applicant and such board. The decision of the authorized board shall be filed in the office of the town clerk within five business

days after such decision is rendered, and a copy thereof mailed to the applicant. Nothing herein shall preclude the holding of a public hearing on any matter on which a public hearing is not so required.

8. Notice to metropolitan, regional or county planning agency. At least ten days before such hearing, the authorized board shall mail notices thereof to the county, metropolitan or regional planning agency, as required by section two hundred thirty-nine-m of the general municipal law, which notice shall be accompanied by a full statement of the matter under consideration, as defined in subdivision one of section two hundred thirty-nine-m of the general municipal law. In the event a public hearing is not required, the matter shall be referred to the metropolitan, county, or regional planning agency before final action is taken thereon, if required by section two hundred thirty-nine-m of the general municipal law.

9. Compliance with state environmental quality review act. The authorized board shall comply with the provisions of the state environmental quality review act under article eight of the environmental conservation law and its implementing regulations.

10. Court review. Any person aggrieved by a decision of the authorized board or any officer, department, board or bureau of the town may apply to the supreme court for review by a proceeding under article seventy-eight of the civil practice law and rules. Such proceedings shall be instituted within thirty days after the filing of a decision by such board in the office of the town clerk. The court may take evidence or appoint a referee to take such evidence as it may direct, and report the same, with findings of fact and conclusions of law, if it shall appear that testimony is necessary for the proper disposition of the matter. The court shall itself dispose of the matter on the merits, determining all questions which may be presented for determination.

11. Costs. Costs shall not be allowed against the authorized board unless it shall appear to the court that it acted with gross negligence, in bad faith, or with malice in making the decision appealed from.

12. Preference. All issues addressed by the court in any proceeding under this section shall have preference over all civil actions and proceedings.

## Appendix B

### Illustrative site development plan regulations - integral with zoning local law or ordinance

**Proposed site plan review and approval provisions.** Amendment to "Ordinance of the year 1971 for zoning in the specified districts of the Town of Hanover," Chautauqua County.

**Section 16 Site Plan Review and Approval.** Prior to the issuance of a zoning permit in the Business (B-1) District, the zoning officer shall require site plan approval by the planning board pursuant to this section. The zoning officer shall notify an applicant for a zoning permit where site plan approval is required of the provisions of this section.

**16.1 Sketch plan.** A sketch plan conference may be held between the planning board and the applicant prior to the preparation and submission of a formal site plan. The intent of such a conference is to enable the applicant to inform the planning board of his proposal prior to the preparation of a detailed site plan; and for the planning board to review the basic site design concept, advise the applicant as to potential problems and concerns and to generally determine the information to be required on the site plan. In order to accomplish these objectives, the applicant should provide the following:

(a) A statement and rough sketch showing the locations and dimensions of principal and accessory structures, parking areas, access signs (with descriptions), existing and proposed vegetation, and other planned features; anticipated changes in the existing topography and natural features; and, where applicable, measures and features to comply with flood hazard and flood insurance regulations;

(b) A sketch or map of the area which clearly shows the location of the site with respect to nearby streets, rights-of-way, properties, easements and other pertinent features; and

(c) A topographic or contour map of adequate scale and detail to show site topography.

**16.2 Application for site plan approval.** An application for site plan approval shall be made in writing to the chairman of the planning board and shall be accompanied

by information contained on the following checklist. Where the sketch plan conference was held, the accompanying information shall be drawn from the following checklist as determined necessary by the planning board at said sketch plan conference.

(a) Site plan checklist.

1. Title of drawing, including name and address of applicant and person responsible for preparation of such drawing;
2. North arrow, scale and date;
3. Boundaries of the property plotted to scale;
4. Existing watercourses;
5. Grading and drainage plan, showing existing and proposed contours;
6. Location, design, type of construction, proposed use and exterior dimensions of all buildings;
7. Location, design and type of construction of all parking and truck loading areas, showing access and egress;
8. Provision for pedestrian access;
9. Location of outdoor storage, if any;
10. Location, design and construction materials of all existing or proposed site improvements including drains, culverts, retaining walls and fences;
11. Description of the method of sewage disposal and location, design and construction materials of such facilities;
12. Description of the method of securing public water and location, design and construction materials of such facilities;
13. Location of fire and other emergency zones, including the location of fire hydrants;
14. Location, design and construction materials of all energy distribution facilities, including electrical, gas and solar energy;
15. Location, size and design and type of construction of all proposed signs;
16. Location and proposed development of all buffer areas, including existing vegetative cover;
17. Location and design of outdoor lighting facilities;
18. Identification of the location and amount of building area proposed for retail sales or similar commercial activity;

19. General landscaping plan and planting schedule;
20. An estimated project construction schedule.
21. Record of application for and approval status of all necessary permits from state and county officials.
22. Identification of any state or county permits required for the project's execution; and
23. Other elements integral to the proposed development as considered necessary by the planning board.

**16.3 Review of site plan.** The planning board's review of the site plan shall include, as appropriate, but is not limited to, the following general considerations:

- (a) Location, arrangement, size, design and general site compatibility of buildings, lighting and signs.
- (b) Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.
- (c) Location, arrangement, appearance and sufficiency of off-street parking and loading.
- (d) Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
- (e) Adequacy of stormwater and drainage facilities.
- (f) Adequacy of water supply and sewage disposal facilities.
- (g) Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation.
- (h) Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
- (i) Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.

**16.4 Planning board action on site plan.** Within forty-five (45) days\* of the receipt of an application for site plan approval, the planning board shall render a decision, file said decision with the town clerk, and mail such decision to the applicant with a copy to the zoning

officer. The time within which a decision must be rendered may be extended by mutual consent of the applicant and planning board.

(a) Upon approval of the site plan and payment by the applicant of all fees and reimbursable costs due to the town, the planning board shall endorse its approval on a copy of the final site plan and shall forward a copy to the applicant, zoning officer, and file same with the town clerk.

(b) Upon disapproval of a site plan, the planning board shall so inform the zoning officer and the zoning officer shall deny a zoning permit to the applicant. The planning board shall also notify the applicant in writing of its decision and its reasons for disapproval. Such disapproval shall be filed with the town clerk.

**16.5 Reimbursable costs.** Costs incurred by the planning board for consultation fees or other extraordinary expenses in connection with the review of a proposed site plan shall be charged to the applicant, not to exceed \$\_\_\_\_\_.

**16.6 Performance guarantee.** No certificate of occupancy shall be issued until all improvements shown on the site plan are installed or a sufficient performance guarantee has been posted for improvements not yet completed. The sufficiency of such performance guarantee shall be determined by the town board after consultations with the planning board, zoning officer, town attorney and other appropriate parties.

**16.7 Inspection of improvements.** The zoning officer shall be responsible for the overall inspection of site improvements including coordination with the planning board and other officials and agencies, as appropriate.

**16.8 Integration of procedures.** Whenever the particular circumstances of proposed development require compliance with either the special use procedure in this zoning ordinance or other requirements of the town, the planning board shall attempt to integrate, as appropriate, site plan review as required by this section with the procedural and submission requirements for such other compliance.

---

\*Now superseded by 62-day requirement of NYS Town Law, §274-a

## Appendix C

### Illustrative site development plan regulations - separate local law

#### Town of Geneseo - Site Plan Review Law Article I Introductory Provisions

**Section 1.010 Enactment.** The Town Board of the Town of Geneseo, Livingston County, New York, does hereby ordain and enact the Town of Geneseo Site Plan Review Law pursuant to the authority and provisions of section 10 of the Municipal Home Rule Law and section 274-a of the Town Law.

**1.020 Short title.** This local law shall be known as the "Town of Geneseo Site Plan Review Law." The Town of Geneseo is hereinafter referred to as the "town."

**1.030 Intent and purpose.** Through site plan review, it is the intent of this local law to promote the health, safety and general welfare of the town. A clean, wholesome, attractive environment is declared to be of importance to the health and safety of the inhabitants of the town and, in addition, such an environment is deemed essential to the maintenance and continued development of the economy of the town and the general welfare of its inhabitants.

It is further the intent of this local law to ensure that optimum overall conservation, protection, preservation, development and use of the natural and man-related resources of the town, by regulating land use activity within the town through review and approval of site plans. It is not the intent of this local law to prohibit per se any land use activity but to allow all land use activities which will meet the standards set forth in this local law.

**1.040 Authorization of Planning Board to review site plans.** The Planning Board is hereby authorized to review and approve or disapprove site plans for land uses within the town as hereinafter designated pursuant to and in accordance with the standards and procedures set forth in this local law.

#### Article II Applicability and definitions

**Section 2.010 Applicability of review requirements.** All new land use activities within the town shall require site plan review and approval before being undertaken,

except the following:

1. Construction of one- or two-family dwelling and ordinary accessory structures, and related land use activities.
2. Landscaping or grading which is not intended to be used in connection with a land use reviewable under the provisions of this local law.
3. Ordinary repair or maintenance or interior alterations to existing structures or uses.
4. Exterior alterations or additions to existing structures which would not increase the square footage of the existing structure by more than 25%; and having a cost value of less than \$5,000.
5. Nonstructural agricultural or gardening uses not involving substantial timber cutting.
6. Signs under 10 square feet.
7. The sale of agricultural produce and temporary structures related to sale of agricultural produce.
8. Garage, lawn and porch sales not exceeding three days. If such sales take place more often than three (3) times in any calendar year, site plan approval will be required.

Any person uncertain of the applicability of this local law to a given land use activity may apply in writing to the planning board for a written jurisdictional determination.

**2.020 Effect on existing uses.** This law does not apply to uses and structures which are lawfully in existence as of the date this local law becomes effective. Any use which would otherwise be subject to this law, that has been discontinued for a period of two years or more shall be subject to review pursuant to the terms of this law before such use is resumed. Any use or structure shall be considered to be in existence provided the same has been substantially commenced as of the effective date of this local law and fully constructed and completed within one year from the effective date of this local law.

**2.030 Relationship of this law to other laws and regulations.** This local law in no way affects the provisions or requirements of any other federal, state, or local law or regulations. Where this local law is in conflict with any other such law or regulation, the more restrictive shall apply.



## 2.040 Definitions.

“Family” means a person or persons related to each other by blood, marriage or adoption, or any number of persons, irrespective of any such relationship, which nonetheless functions as the equivalent of such a family, living together as a single housekeeping unit.

“Land use activity” means any construction or other activity which changes the use or appearance of land or a structure or the intensity of use of land or a structure. “Land use activity” shall explicitly include, but not be limited to, the following: new structures, expansions to existing structures, new uses, changes in or expansions of existing uses, roads, driveways, and excavations for the purpose of extracting soil or mineral deposits.

“One family dwelling” means a complete self-contained residential unit for permanent habitation by one family only, and containing one or more rooms and facilities for living including cooking, sleeping, and sanitary needs.

“Shoreline” means the mean high water mark of any lake, pond, river, or permanent stream.

“Structure” means any object constructed, installed or placed on land to facilitate land use and development or subdivision of land, such as buildings, sheds, signs, tanks, and any fixtures, additions and alterations thereto.

“Structure, accessory” means any structure designed to accommodate an accessory use but detached from the principal structure, such as, a free standing garage for vehicles accessory to the principal use, a storage shed, garden house or similar facility.

“Two family dwelling” means two complete, but separate, self-contained residential units each intended for permanent habitation by one family only in a single structure having a common wall roof, wall or ceiling and containing separate rooms and facilities for living including cooking, sleeping, and sanitary needs.

Any term used in this local law which is not defined hereinabove shall carry its customary meaning unless the context otherwise dictates.

## Article III Site plan review

### Section 3.010 Procedures - Generally. Prior to

undertaking any new land use activity except for a one- or two-family dwelling and other uses specifically excepted in section 2.010 of this local law, a site plan approval by the planning board is required. Applicants for site plan approval should follow the recommended procedures related to the sketch plan conference as hereinafter set forth. Applicants must comply with all other procedures and requirements of this local law.

**3.020 Sketch plan.** A sketch plan conference shall be held between the planning board and the applicant prior to the preparation and submission of a formal site plan. The intent of such a conference is to enable the applicant to inform the planning board of his proposal prior to the preparation of a detailed site plan; and for the planning board to review the basic site design concept, advise the applicant as to potential problems and concerns and to generally determine the information to be required on the site plan. In order to accomplish these objectives, the applicant shall provide the following:

1. A statement and rough sketch showing the locations and dimensions of principal and accessory structures, parking areas, access signs (with descriptions), existing and proposed vegetation, and other planned features; anticipated changes in the existing topography and natural features; and, where applicable, measures and features to comply with flood hazard and flood insurance regulations;
2. An area map showing the parcel under consideration for site plan review, and all properties, subdivisions, streets, rights-of-way, easements and other pertinent features within 200 feet of the boundaries of the parcel; and
3. A topographic or contour map of adequate scale and detail to show site topography.

**3.030 Application requirements.** An application for site plan approval shall be made in writing to the chairman of the planning board and shall be accompanied by information contained on the following checklist. Where the sketch plan conference was held, the accompanying information shall be drawn from the following checklist as determined necessary by the planning board at said sketch plan conference.

#### *Site plan checklist:*

1. Title of drawing, including name and address of applicant and person responsible for preparation of

- such drawing;
- 2. North arrow, scale and date;
- 3. Boundaries of the property plotted to scale;
- 4. Existing buildings;
- 5. Grading and drainage plan, showing existing and proposed contours, rock outcrops, depth to bedrock, soil characteristics, and watercourses;
- 6. Location, design, type of construction, proposed use and exterior dimensions of all buildings;
- 7. Location, design and type of construction of all parking and truck loading areas, showing access and egress;
- 8. Provision for pedestrian access;
- 9. Location of outdoor storage, if any;
- 10. Location, design and construction materials of all existing or proposed site improvements including drains, culverts, retaining walls and fences;
- 11. Description of the method of sewage disposal and location, design and construction materials of such facilities;
- 12. Description of the method of securing public water and location, design and construction materials of such facilities;
- 13. Location of fire and other emergency zones, including the location of fire hydrants;
- 14. Location, design and construction materials of all energy distribution facilities, including electrical, gas and solar energy;
- 15. Location, size and design and type of construction of all proposed signs;
- 16. Location and proposed development of all buffer areas, including existing vegetative cover;
- 17. Location and design of outdoor lighting facilities;
- 18. Identification of the location and amount of building area proposed for retail sales or similar commercial activity;
- 19. General landscaping plan and planting schedule;
- 20. An estimated project construction schedule;
- 21. Record of application for and status of all necessary permits from other governmental bodies;
- 22. Identification of any permits from other governmental bodies required for the project's execution; and
- 23. Other elements integral to the proposed development as may be considered necessary in the particular case by the planning board.

**3.040 Required fee.** An application for site plan review shall be accompanied by a fee of \$\_\_\_\_\_.

**3.050 Reimbursable costs.** Cost incurred by the

planning board for consultation fees or other extraordinary expenses in connection with the review of a proposed site plan shall be charged to the applicant, not to exceed \$\_\_\_\_\_.

## **Article IV**

### **Review standards**

#### **Section 4.010 General standards and considerations.**

The planning board's review of the site plan shall include, as appropriate, but is not limited to, the following general considerations:

- 1. Location, arrangement, size, design and general site compatibility of buildings, lighting and signs.
- 2. Adequacy and arrangement of vehicular traffic access and circulation, including intersections, road widths, pavement surfaces, dividers and traffic controls.
- 3. Location, arrangement, appearance and sufficiency of off-street parking and loading.
- 4. Adequacy and arrangement of pedestrian traffic access and circulation, walkway structures, control of intersections with vehicular traffic and overall pedestrian convenience.
- 5. Adequacy of stormwater and drainage facilities.
- 6. Adequacy of water supply and sewage disposal facilities.
- 7. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and/or noise buffer between the applicant's and adjoining lands, including the maximum retention of existing vegetation.
- 8. Adequacy of fire lanes and other emergency zones and the provision of fire hydrants.
- 9. Special attention to the adequacy and impact of structures, roadways and landscaping in areas with susceptibility to ponding, flooding and/or erosion.
- 10. Overall impact on the neighborhood including compatibility of design consideration.

**4.020 Specific standards and considerations.** The following specific standards shall apply in conjunction with the subject uses or in the designated areas.

#### **4.021 Shoreline standards and considerations.**

- 1. All construction on any shoreline lot shall be carried out in such manner as to minimize interference with the natural course of such waterway, to avoid erosion of the shoreline, to minimize increased runoff of ground and surface

water into the waterway, to remove only that vegetation which is necessary to the accomplishment of the project, and to generally maintain the existing aesthetic and ecological character of the shoreline.

2. No on-site sewage tile field or seepage pit shall be located within one hundred (100) feet of any shoreline and no septic or other holding tank shall be located within fifty (50) feet of any shoreline, as measured from the normal high water mark of the waterbody.
3. Any boat pump-out or other connection to provide for the accommodation of sanitary wastes shall be connected to an adequate disposal system.
4. Any marina, boat service facility or any storage of petroleum products within one hundred (100) feet or reasonable setback as determined necessary by the planning board, of the shoreline shall include adequate provisions for insuring that any leak, rupture or spill will be contained and not be introduced into or affect the adjacent waterway. In particular, a raised earthen or paved berm or dyke shall be constructed in such manner so as to afford adequate protection.
5. Any paved or otherwise improved parking, loading or service area within one hundred (100) feet of any shoreline shall be designed and constructed so as to minimize surface runoff and the entrance of any chemical pollutants or earthen siltation into the waterway.

#### **Article V**

##### **Public hearing and planning board decision**

**Section 5.010 Public hearing.** The planning board may conduct a public hearing on the site plan if considered desirable by a majority of its members. Such hearing shall be held within 62 days of the receipt of application for site plan review and shall be advertised in the town's official newspaper, or if there is none, in a newspaper of general circulation in the town at least five (5) days before the public hearing.

**5.020 Planning board decision.** Within 62 days of receipt of the application for site plan approval or if a public hearing is held within 62 days of public hearing, the planning board shall render a decision. In its decision the planning board may approve, approve with modifications or disapprove the site plan. The time period in which the planning board must render its decision can be extended by mutual consent of the

applicant and the planning board.

1. **Approval.** Upon approval of the site plan, and payment by the applicant of all fees and reimbursable costs due the town, the planning board shall endorse its approval on a copy of the site plan and shall immediately file it and a written statement of approval with the town clerk. A copy of the written statement of approval shall be mailed to the applicant by certified mail, return receipt requested.
2. **Approval with modifications.** The planning board may conditionally approve the final site plan. A copy of written statement containing the modifications required by the conditional approval will be mailed to the applicant by certified mail, return receipt requested. After adequate demonstration to the planning board that all conditions have been met, and payment by the applicant of all fees and reimbursable costs due the town, the planning board shall endorse its approval on a copy of the site plan and shall immediately file it and a written statement of approval with the town clerk. A copy of the written statement of approval shall be mailed to the applicant by certified mail, return receipt requested.
3. **Disapproval.** Upon disapproval of the site plan the decision of the planning board shall immediately be filed with the town clerk and a copy thereof mailed to the applicant by certified mail, return receipt requested, along with the planning board's reasons for disapproval.

#### **Article VI**

##### **Appeal of planning board decision**

**Section 6.010 Appeal procedure.** Any person aggrieved by any decision of the planning board or any officer, department, board or bureau of the town, may apply to the supreme court for a review by a proceeding under Article 78 of the Civil Practice Law and Rules. Such proceedings shall be instituted within thirty (30) days after the filing of a decision in the office of the town clerk.

#### **Article VII**

##### **Miscellaneous provisions**

**Section 7.010 Enforcement officer.** The town board may appoint an enforcement officer to carry out the duties assigned by this local law or by any additional

regulations adopted pursuant to section 7.020 hereof. If appointed, the enforcement officer shall be responsible for the overall inspection of site improvements including coordination with the planning board and other officials and agencies, as appropriate.

**7.020 Further regulations by planning board.** The planning board may, after a public hearing, adopt such further rules and regulations as it deems reasonably necessary to carry out the provisions of this local law.

**7.030 Amendments.**

1. The town board may on its own motion, on petition, or on recommendation of the planning board, after public notice and hearing, amend this local law pursuant to all applicable requirements of law.
2. All proposed amendments originating by petition, or by motion of the town board, shall be referred to the planning board for a report and recommendation thereon. The planning board shall submit its report within thirty (30) days after receiving such referral. Failure of the planning board to report within the required time shall be deemed to constitute a recommendation for approval of the proposed amendment.

**7.040 Integration of procedures.** Whenever the circumstances of proposed development require compliance with this Site Plan Review Law and with any other local law, ordinance or requirement of the town, the planning board shall attempt to integrate, as appropriate, site plan review as required by this local law with the procedural and submission requirements for such other compliance.

**7.050 Enforcement.** Any person, corporation, partnership, association of other legal entity who shall violate any of the provisions of this local law, or any conditions imposed by a permit pursuant hereto shall be guilty of an offense and subject to a fine of not more than two hundred fifty dollars (\$250) or by penalty of two hundred fifty dollars (\$250) to be recovered by the town in a civil action. Every such person or entity shall be deemed guilty of a separate offense for each week such violation, disobedience, omission, neglect or refusal shall continue.

**7.060 Severability.** The provisions of this local law are severable. If any article, section, paragraph or provision of this local law shall be invalid, such invalidity shall apply only to the article, section, paragraph or provision(s) adjudged invalid, and the rest of this local law shall remain valid and effective.

## Appendix D

### Sample Application for Site Development Plan Approval

Preliminary ☐ Date: \_\_\_\_\_ Final ☐ Date: \_\_\_\_\_  
(Check appropriate box)

Name of proposed development \_\_\_\_\_

**Applicant:**

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

**Plans Prepared by:**

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

**Owner (if different):**

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

(If more than one owner, provide information for each)

Ownership intentions, i.e., purchase options \_\_\_\_\_

Location of site \_\_\_\_\_

Tax map description \_\_\_\_\_

Section \_\_\_\_\_ Block \_\_\_\_\_ Lot \_\_\_\_\_

Current zoning classification \_\_\_\_\_

State and federal permits needed (list type and appropriate department) \_\_\_\_\_

Proposed use(s) of site \_\_\_\_\_

Total site area (square feet or acres) \_\_\_\_\_

Anticipated construction time \_\_\_\_\_

Will development be staged? \_\_\_\_\_

Current land use of site (agriculture, commercial, undeveloped, etc.) \_\_\_\_\_

Current condition of site (buildings, brush, etc.) \_\_\_\_\_

Character of surrounding lands (suburban, agriculture, wetlands, etc.) \_\_\_\_\_

Estimated cost of proposed improvement \$ \_\_\_\_\_

Anticipated increase in number of residents, shoppers, employees, etc. (as applicable) \_\_\_\_\_

**Describe proposed use, including primary and secondary uses; ground floor area; height; and number of stories for each building:**

- for residential buildings include number of dwelling units by size (efficiency, one-bedroom, two-bedroom, three- or more bedrooms) and number of parking spaces to be provided.
- for non-residential buildings, include total floor area and total sales area; number of automobile and truck parking spaces.
- other proposal structures.

(Use separate sheet if needed)

---

---

---

---

---

---

---

---

---

# Appendix E

## Sample Site Development Plan Review Checklist

### Proposed Development:

Name \_\_\_\_\_  
\_\_\_\_\_

### Procedural Sequence:

Initial contact with enforcement officer

Presubmission conference

Preliminary application

Fee paid: Amount \$ \_\_\_\_\_

Public hearing notice

Public hearing

Tentative action:

Approval \_\_\_\_\_

Approval with modifications

Disapproval \_\_\_\_\_

Resubmitted \_\_\_\_\_

Lapse date for final approval

Final application

Referral

Comments returned

Final Action:

Approval \_\_\_\_\_

Approval with modifications

Conditions satisfied

Disapproval \_\_\_\_\_

Resubmitted \_\_\_\_\_

Building permit granted

Performance bond required

Amount \$ \_\_\_\_\_

Period \_\_\_\_\_

Improvements covered \_\_\_\_\_

Performance bond satisfied

Certificate of occupancy issued

### Applicant:

Name \_\_\_\_\_  
Address \_\_\_\_\_

Telephone \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## Sample Site Development Plan Review Checklist (cont'd)

<b>Technical Considerations</b>	<b><u>Item Satisfied</u></b>
North arrow, scale, date	_____
Property boundary, dimensions & angles	_____
Easements and deed restrictions	_____
Names, locations and widths of adjacent streets	_____
Land use, zoning, ownership and physical improvement of adjacent properties	_____
Conformity with comprehensive plan	_____
<b>Impact on environs:</b>	
Land use	_____
Transportation	_____
Community facilities and services	_____
Aesthetics	_____
Environmental, i.e., air, water, noise, etc.	_____
Energy conservation	_____
Historic preservation	_____
Environmental impact statement	_____
Existing, on-site physical improvements	_____
<b>Existing natural features:</b>	
Geologic features	_____
Soil characteristics	_____
Topography	_____
Vegetation	_____
Hydrologic features	_____
<b>Proposed developments:</b>	
Grading and drainage plan	_____
Buildings and other structures	_____
Improvements such as parking, storage and recreation areas	_____
Vehicular and pedestrian ways including ingress and egress	_____
Utility lines and appurtenances	_____
Outdoor lighting and public address systems	_____
Outdoor signs	_____
Landscaping plans	_____
Architectural plans	_____
Materials specifications	_____
Construction schedule	_____



## Appendix F

### Sample design review methodology\*

#### Apartments and Condominiums

**Introduction.** Density is a key factor in shaping the character or psychology of a community; a relatively high village density does not guarantee a "problem" village, as low density does not guarantee a desirable village. However, apartments and condominiums, because of their density, generate a greater impact on surrounding areas than one- or two-family house subdivisions.

**Land use.** The development should be harmonious with the areas around it, functional and aesthetically pleasing. The components of the site should complement each other. The design should provide the residents of the development with both privacy and individuality. The impact of apartments on the local tax base has been a subject of controversy for several years. Studies prepared by Nassau County and the Town of Clay in New York show that apartments generally pay their share of the cost of education. Studies for other areas, such as the State of New Jersey; Connecticut; Montgomery County, Pennsylvania; and Fairfax County, Virginia, have had similar results.

The need for recreational facilities in apartment/condominium complexes is often overlooked. It is very important that children have some play area. Care could be taken so that children's needs for movement should not conflict with adult needs for privacy. Trees selected for the play area should be ones which can be used for climbing. Site furniture should be provided with children's needs in mind. Play equipment should be selected with the children's preferences in mind. The greater the variety of equipment in an area, the greater the use that area will have.

#### **Active recreation standards:**

- .5 acres/1,000 people (children's play area)
- 1.5 acres/1,000 people (field play for younger children)
- 1.5 acres/1,000 people (older children, adults) (tennis, basketball courts)
- 1 pool/1,000 people (swimming)
- 9 hole 60 acres (min.) 80 acres (max.)
- 18 hole 120 acres (min.) 160 acres (max.)

The most popular sports in condominiums are tennis and

swimming.

**Site analysis.** A careful site analysis has a great deal to do with the final land use of the site. Soil composition and bearing, as well as slope, will dictate the type of development which is practical.

One of the most valuable characteristics of some sites is the view: it should be developed to its greatest potential.

Preservation of existing vegetation helps keep the character of a site and helps to arrest erosion. There is no question that trees and shrubs enhance the livability of housing areas.

The amount of grading on the site should be kept to a minimum. The less the soil is disturbed, the greater the survival of existing plant materials and the less chance of erosion.

It is important to preserve any water features which contribute to the beauty of a site's layout. A planning board and developer should be able to maximize the use of water and other natural features without undue restriction of the property.

The solutions can usually be achieved through careful design.

Certain man-made features such as stone walls, fences, roads, etc., can be used to enhance a development and should follow ridges and vales rather than straddle hills perpendicular to contours. Areas with poor drainage should be avoided because they necessitate more bridges, culverts and other drainage works.

**Transportation.** Traffic in and out of a multi-family housing development must be studied to determine its impact on surrounding areas. Pedestrian-vehicular circulation within the development should also be studied. Wherever possible, the crossing of the pedestrian and vehicular traffic should be prevented.

---

\*Adapted from *Design Review Manual*, Syracuse/Onondaga County Planning Agency, 1975

Streets should be logically related to the topography and coordinated into a system in which each street performs its intended function.

The function that a street is intended to serve will determine both its right-of-way and its pavement width. The fact that collector streets and major streets carry considerably higher amounts of traffic than minor residential streets must be reflected in the criteria used for determining the street cross-section. Other considerations affecting the width of street right-of-way are sidewalks, planting strips and utilities, including street lights and fire hydrants.

**On-Site Circulation.** When residential development occurs along major streets, special consideration must be given to its design. The use of a buffer strip and a marginal access street helps to alleviate traffic noise and creates a private environment. It also increases safety by greatly reducing the points of access to the major street. All entries and exits to the development should be located away from traffic problem areas. Depending on the size of the development, a traffic light may be needed.

Intersections are another important element in street planning and design. It is very important for streets to intersect at right angles rather than acute angles. The center lines of offset street intersections should be no closer than 125 feet, and in some areas they are required by law to be even farther apart. Improperly designed street intersections become potential traffic hazards.

Common pedestrian walks should be used to move people within the development so as to avoid contact with vehicles.

Provision should be made for bicycling, avoiding conflicts with pedestrians and motorized traffic.

**Structures.** Structures within a development should complement the site (i.e., if the site has an attractive view, the structure should be designed to take advantage of that view). Signs should be uniform and unobtrusive. Building lines should not be too linear. Wherever possible, building units should be staggered; this helps to define individual spaces and breaks up monotonous building lines.

Provision of services should be considered. Wherever possible, dumpsters should be screened or enclosed.

If buildings are arranged in groups, emergency vehicles should have access to all units.

**Site work.** Plants used in landscaping should be indigenous to enhance their chances of survival. Street trees should be used along vehicular routes; they will aid in pollution control and delineate the road as a space apart from the dwelling units. A great variety of plants may not always be desirable. A planting design may become confused from excessive variety. A few types of plants used properly can provide attractive landscaping. Parking areas should be screened.

Grading and drainage paths should be studied carefully to prevent ponding areas within the development. Earthwork such as berms can and should be used to screen undesirable views and to direct pedestrian traffic on the site.

All construction details should be in harmony with the building units. Utility service boxes should be conveniently located.

### **Drive-in facilities**

**Introduction.** The drive-in facility, as well as the gasoline service station, is a product of the automobile age. Practically unknown prior to World War II, except for the occasional roadside diner, "drive-ins" now comprise practically every type of commercial use which can be serviced from a highway, ranging from dairy or limited grocery retail stores, to banks and fast-food restaurants. Although the design specifics for each use will vary according to function, there are certain general observations which can be made about all of these uses.

**Land use.** Due to intense competition between development types (e.g., fast-food, banks, etc.) for sites which maximize ease of access for the public, the drive-in facility has led to a proliferation of "strip" commercial development along principal highway routes. This, in turn, has led to increased traffic congestion on these routes and visual confusion and clutter.

The basic problems of the strip commercial development are:

- 1) individual uses with separate entry and exit drives cause excessive turns (left hand turning movements are particularly difficult);

2) entry and exit drives are often ill-defined and may not meet applicable state and local standards;

3) traffic flow between adjoining uses is rarely available, forcing cars back on to the highway;

4) individual uses may be poorly designed and the competition for attention has produced further visual disorder through a host of signs and symbols designed to attract the eye;

5) landscape screening, curbing and other devices which might bring some order are usually minimal or nonexistent;

6) zoning technique requiring special permits or other means of regulating uses are generally not comprehensive enough to provide adequate controls for the series of uses which comprise a "strip";

7) special permit procedures and other controls usually regulate only certain types of drive-in uses (for example, fast-food restaurants may require a special permit, whereas banks may not) and such controls rarely, if ever regulate proximity of uses and the consequent potential for increased traffic.

The problems discussed above do not include all the problems caused by "strip" commercial developments. They are, however, typical of the problem faced by the average suburban or semi-suburban community. What, then, can the community do to provide some way of ordering and controlling drive-in facilities? First, it should be noted that the automobile technology which produced the "strip" is not likely to change so drastically that such commercial development will suddenly disappear (although the current energy situation could cause some reduction in the rate of such growth). Nor is it practicable to attempt to "legislate away" the strip. The most realistic approach (and one that many communities have already undertaken) is the development of more comprehensive standards for such growth. These standards can take several forms, which include arterial or highway service districts, planned or cluster development controls and marginal or service road system.

*Arterial or highway service districts* - These are special districts for the regulation of strip commercial development established through zoning. They could be established along adjoining principal highway arteries to

regulate use type, geometrics (setback, site coverage), treatment (landscaping and signs), circulation (ingress, egress, internal flow and parking) and proximity between uses. In addition, these districts would provide for defined buffer areas between commercial uses and other uses such as residences. They would be similar to existing special permit procedures, but would view uses in the aggregate rather than singly.

*Planned or cluster development controls* - These would provide that a combination of drive-in facilities (three or more) would have to be located in a specified area with common access before any one use could be developed. This would, in effect, provide for the clustering of drive-in facilities with controlled access. A variation would be to permit drive-in facilities in shopping centers where they could share vehicular access with the center and thus limit additional curb cuts for single uses (the drive-in facility would be a controlled "satellite" use within the center)

*Marginal or service road system* - The marginal service road system would be located within the arterial control district and would require all drive-in uses to have access only on to this road. The marginal service road would run approximately parallel to the main arterial highway and controlled access points would connect the two at specified intervals, or in concert with existing highway intersections or access points for major shopping centers. The marginal road system could also serve residential and institutional areas on the same basis.

**Site analysis.** The location of drive-in facilities will generally be dictated by access to a highway service corridor, demand for services and market potential. Community planners should recognize these factors and respond to them by developing controls (see above) for regulating such uses. In analyzing the suitability of sites for their uses as drive-in facilities the following physical site conditions should be considered.

*Soils* - For small site areas the problems associated with soil composition should not be an insurmountable barrier. However, soils which exhibit extremely poor drainage, severity of slope or instability may prove economically infeasible for such development. Extensive regrading of small sites should be avoided. Where such regrading is done, provision should be made for the use of retaining walls, drainage ways and other devices which will insure protection of adjoining sites.

*Drainage* - Drive-in facilities will invariably require relatively large paved areas to accommodate moving vehicles and parking. Proposals which completely pave site areas should not be acceptable. If possible, the design should be compatible with a total drainage system for the site and its surrounding area.

*Vegetation* - Where possible, existing vegetation should be retained and incorporated into the landscaping plan for the facility. This is particularly true if large trees or other significant plants can be salvaged.

*Air quality* - Although this may appear to be a minor concern for a small site, state and federal regulations concerning air quality where a series of facilities will concentrate cars, should be reviewed prior to final approval.

*View* - Although site design and view will generally be determined by the location of the site in relation to an existing highway, the potential visual impact of the facility in relation to surrounding uses should be given careful consideration.

**Transportation.** In planning drive-in facilities the movement of vehicular traffic is a major consideration. Because drive-in facilities are traffic generators, their effect upon an existing highway system is especially critical. The following elements should be considered in analyzing these effects.

*Existing system* - The ability of existing roadways to absorb increased traffic flow, the creation of numerous turning movements into individual sites and the need for controls (i.e., signals, access points, etc.) should be given careful consideration. If necessary, controls should be implemented which would create clustering of drive-in facilities or the development of marginal service roads for an entire area (see *Land Use*).

*Relation to other facilities* - Even if it is not feasible to create a marginal road system or clustering of sites, the relation between several drive-in facilities should be given careful consideration. Curb cuts which are located too close together or which produce conflicts through alignment of the highway should be eliminated. The possibility of providing joint means of access or interconnecting sites should be examined as an alternative.

*Traffic movement* - Wherever possible, curb cuts for

drive-in facilities should be coordinated with existing traffic signals, turning lanes and intersections. Minimum distances should be established between the new facility and access points on adjoining uses and intersections.

*Pedestrian access* - Pedestrian access to drive-in facilities will undoubtedly be limited. However, this does not mean that it should not be considered, particularly in shopping centers where the facility functions as a "satellite" to the main center area. Pedestrian walks should be provided to accommodate pedestrians entering from shopping center areas and from the street wherever practicable.

**On-site circulation.** Internal circulation of both vehicles and pedestrians should be carefully reviewed. Points of conflict should be minimized and well-defined pedestrian paths should be provided. This is especially true in most drive-in facilities where customers will park their cars and walk into the structure for the particular product or service desired. The following elements should be considered.

*Ingress and Egress* - Minimum and maximum driveway widths should be established (12 foot minimum, for example) and curb cuts should be located at minimum distances from property lines. Traffic into and out of the site should be organized into a well-defined system in order to avoid conflict between vehicles entering and leaving the site.

*Entry signs* - Entry and exit signs should be easily seen, uniform and in keeping with other graphic treatments. Visual conflicts with existing signs should be avoided. It would be useful for surveys to include locations of all official highway signs on adjoining right-of-ways and other signs immediately adjoining the site. Photographs of the site are extremely useful in this regard. Flashing or moving signs are confusing and unnecessary.

*Signals* - It is unnecessary and dangerous to have a traffic signal at each facility. However, lack of coordination with existing signals is just as dangerous. If it is practical to align entry and exit drives with existing signals this should be done. Again the use of clustering or marginal roads should be considered.

*Vehicular circulation* - Traffic flow from entries to parking areas to exits should be well defined. Parking spaces which require "backing" directly in front of either

entry or exit drives should be avoided. There should be a one-way traffic system if there are two curb cuts or a loop system with a median strip separating entry and exit if there is one curb cut.

*Parking/service* - Parking spaces should be a minimum of one car length from property lines (greater depth is desirable) in order to allow entering vehicles to pull in from the road. There should be sufficient space to stack cars waiting to exit from the site. Recommended minimum standards for various drive-in facilities are as follows:

Drive-in banks - one space per 300 sq. ft. GFA, plus 5 stacking spaces per drive-in teller bay and two existing spaces;

Shopping and convenience goods, personal service and repair - one space per 200 sq. ft. GFA;

Drive-in restaurants - one space per four seats;

Bowling alleys - four spaces per alley.\*

Service areas should be well defined and, where practicable, screened from parking areas. Their size and configuration will vary dependent upon the use of the facility.

*Pedestrian Circulation* - As previously noted, some access should be provided, if practical, for pedestrians entering from the street or from shopping areas (if the facility is located within a shopping center). This should be subject to individual site conditions. Internal pedestrian circulation (from vehicle to structure or other service area) should be well defined by raised walks and paving materials. Outdoor sitting areas and other amenities for the pedestrian should be considered. The use of different paving materials will not only define pedestrian areas but will also provide visual relief.

**Structures.** The design of structures for drive-in facilities will vary greatly. Banks may use individual designs for each branch location. The majority of fast-food restaurants have adopted prototype designs for their facilities (including graphics packages). Structures should be functional and should not be too large for the site area.

---

\*Eno Foundation For Transportation, Zoning, Parking and Traffic, 1972.

Uniform setbacks and other geometric controls should be observed. In general, the following elements should be considered.

*Relationship to site* - The relation of structures to the site will be dictated largely by circulation needs. Structures should also respond to basic land forms and should be in harmony with adjoining sites, landscape treatment and functional use.

*Plans* - Again, plans will vary greatly depending upon the use of the structure. Prototype designs are common for such facilities, but they should not be considered as totally static. If modifications are warranted, they should be suggested prior to final site approval. A good plan will respond to the needs of both the owner/operator and the user.

*Elevations* - The use of exterior materials should not require a detailed review. Facilities which are to be located in shopping centers should be in keeping with such centers and should blend with them. The use of garish materials or colors simply to attract attention should not be permitted. Drive-in facilities will employ a number of design motifs to market their product or service. These motifs should be complementary to the community and surrounding land uses.

*Codes* - Structures should conform to all applicable building and fire codes.

*Signs* - Signs are, perhaps, the single most important element in any drive-in facility both from a marketing and a community standpoint. Developers will frequently insist on the largest sign or the strongest symbol to identify their product or service. Denying them such signs, they contend, will impose a severe economic hardship.

Although there may be intense competition between such commercial developments, that is no excuse to do away with fair and uniform sign standards. Attractive graphics can enhance both individual sites and the appearance of entire areas and still identify function. Signs for individual sites should be uniform in their treatment. Colors, style of lettering, lighting and sign sizes should complement one another. Where temporary advertising (changing) signs will be used, their location, mounting details, sizes, lighting, lettering and color ranges should be permanently established prior to final site approval. This is often overlooked with the result that a wide

variety of temporary signs of differing style, color and size appears without any positive relation to one another. Too large signs, or too tall mounts, flashing or moving signs should not be permitted.

**Site work.** Proper site detailing will enhance its use and the appearance of the community. It will also decrease maintenance costs for both the site owner and the community.

*Construction details* - Curbs should be of good quality and located so as to provide for separation of pedestrian and vehicular movement. Proper curbing will also provide for adequate surface drainage. Walks and other paved areas should have proper base courses to insure stability and prevent deterioration. Cracked paving, chipped curbs, potholes and the like should be repaired on a regular basis in order to maintain the usability and appearance of the facility. Catch basins and other drainage ways should be located to provide sufficient surface drainage without interfering with smooth pedestrian and vehicular movement. Fencing for screening purposes should be of stockade or similar type.

*Landscaping* - The use of plants, earth berms and varying textures in paving materials will improve the appearance of the site, aid in defining pedestrian areas and provide screening from surrounding uses. Minimum standards should be established for amount, treatment and type of plants to be used. Beware of landscaping plans which show trees with 30 foot spreads, where none exist now or notations which read "landscaping to be provided by others." The municipality should insist on adequate landscape treatment for drive-in facilities. Provisions that insure adequate maintenance of landscaping and removal of dead or diseased plants should also be considered.

*Utilities* - Provision for all utilities to service the site should be indicated prior to final approval.

*Maintenance* - Provisions should be made for adequate maintenance of the site (including re-use or demolition of abandoned drive-in facilities). Trash receptacles should be properly screened from public view. Service areas should be kept clean and areas should be provided for snow removal and storage.

---

### James A. Coon

The James A. Coon Local Government Technical Series is dedicated to the memory of the deputy counsel at the NYS Department of State. Jim Coon devoted his career to assisting localities in their planning and zoning, and helping shape state municipal law statutes.

His outstanding dedication to public service was demonstrated by his work and his writings, including a book entitled *All You Ever Wanted to Know About Zoning*. He also taught land use law at Albany Law School. His contributions in the area of municipal law were invaluable and as a result improved the quality of life of New Yorkers and their communities.

For further information, contact the DOS Division of Local Government at (518) 473-3355.

## **Town Law § 271 Planning board, creation, appointment**

1. Authorization. The town board of each town is hereby authorized by local law or ordinance, to create a planning board consisting of five or seven members and shall, by resolution, appoint the members of such board and designate the chairperson thereof. In the absence of a chairperson the planning board may designate a member to serve as chairperson. The town board may, as part of the local law or ordinance creating said planning board, provide for the compensation of planning board members. In making such appointments, the town board may require planning board members to complete training and continuing education courses in accordance with any local requirements for the training of such members.
2. Appropriation for planning board. The town board is hereby authorized and empowered to make such appropriation as it may see fit for planning board expenses. In a town containing one or more villages, or parts thereof, such charges and expenses less fees, if any collected, shall be a charge upon the taxable property of that part of the town outside of said villages and shall be assessed, levied and collected therefrom in the same manner as other town charges. The planning board shall have the power and authority to employ experts, clerks and a secretary and to pay for their services, and to provide for such other expenses as may be necessary and proper, not exceeding in all the appropriation that may be made therefor by the town board for such planning board.
3. Town board members ineligible. No person who is a member of the town board shall be eligible for membership on such planning board.
4. Terms of members first appointed. The terms of members of the board shall be for terms so fixed that the term of one member shall expire at the end of the calendar year in which such members were initially appointed. The terms of the remaining members shall be so fixed that one term shall expire at the end of each calendar year thereafter. At the expiration of the term of each member first appointed, his or her successor shall be appointed for a term which shall be equal in years to the number of members of the board.
5. Terms of members now in office. Members now holding office for terms which do not expire at the end of a calendar year shall, upon the expiration of their term, hold office until the end of the calendar year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the board.
6. Increasing membership. Any town board may, by local law or ordinance, increase a five member planning board to seven members. Additional members shall be first appointed for single terms as provided by resolution of the town board in order that the terms of members shall expire in each of seven successive years and their successors shall thereafter be appointed for full terms of seven years. No such additional member shall take part in the consideration of any matter for which an application was on file with the planning board at the time of his or her appointment.
7. Decreasing membership. A town board which has seven members on the planning board may by local law or ordinance, decrease the membership to five, to take effect upon the next two expirations of terms. However, no incumbent shall be removed from office except upon the expiration of his or her term, except as hereinafter provided.
8. Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, the town board shall appoint the new member for the unexpired term.
9. Removal of members. The town board shall have the power to remove, after public hearing, any member of the planning board for cause. Any planning board member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as

established by the town board by local law or ordinance.

10. Chairperson duties. All meetings of the planning board shall be held at the call of the chairperson and at such other times as such board may determine. Such chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.
11. Appointment of agricultural member. Notwithstanding any provision of this chapter or of any general, special or local law or ordinance, a town board may, if an agricultural district created pursuant to section three hundred three of article twenty-five-AA of the agriculture and markets law exists wholly or partly within the boundaries of such town, include on the planning board one or more members each of whom derives ten thousand dollars or more annual gross income from agricultural pursuits in said town. As used in this subdivision, the term "agricultural pursuits" means the production of crops, livestock and livestock products, aquacultural products, and woodland products as defined in section three hundred one of the agriculture and markets law.
12. Service on other planning boards. No person shall be disqualified from serving as a member of the town planning board by reason of serving as a member of a village or county planning board.
13. Rules and regulations. The planning board may recommend to the town board regulations relating to any subject matter over which the planning board has jurisdiction under this article or any other statute, or under any local law or ordinance of the town. Adoption of any such recommendations by the town board shall be by local law or ordinance.
14. Report on referred matters; general reports.
  - a. The town board may by resolution provide for the reference of any matter or class of matters, other than those referred to in subdivision thirteen of this section, to the planning board before final action is taken thereon by the town board or other office or officer of said town having final authority over said matter. The town board may further stipulate that final action thereon shall not be taken until the planning board has submitted its report thereon, or has had a reasonable time, to be fixed by the town board in said resolution, to submit the report.
  - b. The planning board may review and make recommendations on a proposed town comprehensive plan or amendment thereto. In addition, the planning board shall have full power and authority to make investigations, maps, reports and recommendations in connection therewith relating to the planning and development of the town as it seems desirable, providing the total expenditures of said board shall not exceed the appropriation provided therefor.
15. Alternate members.



## **Village Law § 7-718 Planning board; creation, appointment**

1. Authorization. The village board of trustees of each village is hereby authorized by local law to create a planning board consisting of five or seven members. Members and the chairperson of such planning board shall be appointed by the mayor. In the absence of a chairperson the planning board may designate a member to serve as chairperson. The village board of trustees may, as part of the local law creating said planning board, provide for the compensation of planning board members. In making such appointments, the village board of trustees may require planning board members to complete training and continuing education courses in accordance with any local requirements for the training of such members.
2. Appropriation for planning board. The village board of trustees is hereby authorized and empowered to make such appropriation as it may see fit for planning board expenses. The planning board shall have the power and authority to employ experts, clerks and a secretary and to pay for their services, and to provide for such other expenses as may be necessary and proper, not exceeding in all the appropriation that may be made therefor by the village board of trustees for such planning board.
3. Village board of trustees ineligible. No person who is a member of the village board of trustees shall be eligible for membership on such planning board.
4. Terms of members first appointed. The terms of members of the planning board first appointed shall be so fixed that the term of one member shall expire at the end of the village official year in which such members were initially appointed. The terms of the remaining members first appointed shall be so fixed that one term shall expire at the end of each official year thereafter. At the expiration of the term of each member first appointed, his or her successor shall be appointed for a term which shall be equal in years to the number of members of the board.
5. Terms of members now in office. Members now holding office for terms which do not expire at the end of the village official year shall, upon the expiration of their term, hold office until the end of the village official year and their successors shall then be appointed for terms which shall be equal in years to the number of members of the board.
6. Increasing membership. Any village board of trustees may, by local law, increase a five member planning board to seven members. Additional members shall be first appointed for single terms in order that the terms of members shall expire in each of seven successive years and their successors shall thereafter be appointed for full terms of seven years. No such additional member shall take part in the consideration of any matter for which an application was on file with the planning board at the time of his or her appointment.
7. Decreasing membership. A village board of trustees which has seven members on the planning board may, by local law, decrease the membership to five, to take effect upon the next two expirations of terms. However, no incumbent shall be removed from office except upon the expiration of his or her term, except as hereinafter provided.
8. Vacancy in office. If a vacancy shall occur otherwise than by expiration of term, the mayor shall appoint the new member for the unexpired term.
9. Removal of members. The mayor shall have the power to remove, after public hearing, any member of the planning board for cause. Any planning board member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by the village board of trustees by local law.

10. Chairperson duties. All meetings of the planning board shall be held at the call of the chairperson and at such other times as such board may determine. Such chairperson, or in his or her absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.
11. Appointment of agricultural member. Notwithstanding any provisions of this chapter or any general, special or local law, the mayor may, if an agricultural district created pursuant to section three hundred three of article twenty-five-AA of the agriculture and markets law exists wholly or partly within the boundaries of such village, include on the planning board one or more members each of whom derives ten thousand dollars or more annual gross income from agricultural pursuits in said village. As used in this subdivision, the term "agricultural pursuits" means the production of crops, livestock and livestock products, aquacultural products, and woodland products as defined in section three hundred one of the agriculture and markets law.
12. Service on other planning boards. No person shall be disqualified from serving as a member of the village planning board by reason of serving as a member of the town or county planning board.
13. Rules and regulations. The planning board may recommend to the village board of trustees regulations relating to any subject matter over which the planning board has jurisdiction under this article or any other statute, or under any local law of the village. Adoption of any such recommendations by the village board of trustees shall be by local law.
14. Report on referred matters; general reports.
  - a. The village board of trustees may by resolution provide for the reference of any matter or class of matters, other than those referred to in subdivision ten of this section, to the planning board before final action is taken thereon by the village board of trustees or other office or officer of said village having final authority over said matter. The village board of trustees may further stipulate that final action thereon shall not be taken until the planning board has submitted its report thereon, or has had a reasonable time, to be fixed by the village board of trustees in said resolution, to submit the report.
  - b. The planning board may review and make recommendations on a proposed village comprehensive plan or amendment thereto. In addition, the planning board shall have the full power and authority to make investigations, maps, reports, and recommendations in connection therewith relating to the planning and development of the village as it seems desirable, providing the total expenditures of said board shall not exceed the appropriation provided therefor.
15. Planning commission. In any village in which there is a planning commission created under article twelve-A of the general municipal law, the board of trustees, instead of authorizing the appointment of a planning board under this article, may provide that the existing commission shall continue, the members thereof thereafter to be appointed in accordance with the provisions of such article twelve-A, and to have the powers and duties as specified for a planning board appointed under this article, provided, however, that in such village section two hundred thirty-eight of the general municipal law shall not be in force.
16. Alternate members.
  - a. A village board of trustees may, by local law or as a part of the local law creating the planning board, establish alternate planning board member positions for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest. Alternate members of the planning board shall be appointed by the mayor, subject to the approval of the board of trustees, for terms established by the village board of trustees.
  - b. The chairperson of the planning board may designate an alternate member to substitute for a

member when such member is unable to participate because of a conflict of interest on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial planning board meeting at which the substitution is made.

- c. All provisions of this section relating to planning board member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, and service on other boards, shall also apply to alternate members.



# Local Law Filing

NEW YORK STATE DEPARTMENT OF STATE  
41 STATE STREET, ALBANY, NY 12231

Planning Board  
Alternates

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~County~~

~~City~~

~~Town~~

~~Village~~

Town of Orchard Park

Local Law No. 3 of the year 1999

A local law To Permit the appointment of alternate members  
(Insert Title)

to the Planning Board and the Zoning Board of Appeals

Be it enacted by the Town Board of the  
(Name of Legislative Body)

~~County~~

~~City~~

~~Town~~

~~Village~~

of Orchard Park

as follows:

## Section 1. LEGISLATIVE INTENT

This local law shall apply to the appointment, terms, functions and powers of alternate members appointed to serve on the Planning Board and Zoning Board of Appeals in the Town of Orchard Park.

## Section 2. DECLARATION ON POLICY

It is sometimes difficult to maintain a quorum on the Planning Board and the Zoning Board of Appeals because members are ill or on extended vacation or find they have a conflict of interest situation on a specific matter before such a board. In such instances, official business cannot be conducted which may delay or impede adherence to required time lines. The use of alternate members in such instances is hereby authorized pursuant to the provisions of this local law.

## Section 3. DEFINITIONS

- A. "Planning Board" means the Planning Board of the Town of Orchard Park as established by the Town Board pursuant to the provisions of §271 of Town Law.
- B. "Zoning Board of Appeals" means the Zoning Board of Appeals of the Town of Orchard Park as established by the Town Board, pursuant to the provisions of §267 of the Town Law.
- C. "Member" means an individual appointed by the Town Board to serve on the Town Planning Board or Zoning Board of Appeals pursuant to the provisions of the local law or ordinance which first established such Planning Board.
- D. "Alternate Member" means an individual appointed by the Town Board when a regular member is unable to participate on an application or matter before the respective board, as provided herein.

(If additional space is needed, attach pages the same size as this sheet, and number each.)

STATE OF NEW YORK  
DEPARTMENT OF STATE  
FILED  
JUN 01 1999

Allyn F. D'Amico  
Secretary of State

#### Section 4. AUTHORIZATION/EFFECT

A. The Town Board of the Town of Orchard Park hereby enacts this local law to provide a process for appointing "alternate" members of Planning Board and Zoning Board of Appeals. These individuals would serve when members are absent or unable to participate on an application or matter before the respective board.

B. Alternate members of the Planning Board and Zoning Board of Appeals shall be appointed by the Town Board or other duly authorized appointing authority, for a term of three (3) years with the terms to expire on December 31 of the third year after the date of their appointment.

C. The chairperson of the Planning Board or Zoning Board of Appeals may designate an alternate to substitute for a member when such member is unable to participate on an application or matter before the board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the board. Such designation shall be entered into the minutes of the initial Planning Board meeting, or Zoning Board of Appeals meeting, at which the substitution is made.

D. All provisions of state law relating to the Planning Board or Zoning Board of Appeals member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as any provisions of a local law/local ordinance relating to training, continuing education, compensation and attendance, shall also apply to alternate members.

#### Section 5. SUPPRESSION OF TOWN LAW

This local law is hereby adopted pursuant to the provisions of §10 of the NYS Municipal Home Rule Law and §10 of the NYS Statute of Local Governments. It is the intent of the Town Board pursuant to §10 of the NYS Municipal Home Rule Law, to supersede the provisions of:

- (1) Section 271 of the Town Law relating to the appointment of members to Town Planning Boards; and/or
- (2) Section 267 of Town Law relating to the appointment of members to Town Zoning Board of Appeals.

#### Section 6. MISCELLANEOUS

A. This Local Law shall be deemed to supersede and repeal any other Local Laws to the extent therein inconsistent herewith.

B. If any part of the Local Law shall be judicially declared to be invalid, void, unconstitutional or unenforceable, all unaffected provisions hereof shall survive such declaration and this Local Law shall remain in full force and effect as if the invalidated portion had not been enacted.

C. Nothing herein shall be deemed to be a waiver or restriction upon any rights and powers available to the Town of Orchard Park to further regulate the subject matter of this Local Law.

#### Section 7. EFFECTIVE DATE

This Local Law shall become effective upon filing with Secretary of State of the State of New York, as required by the Municipal Home Rule Law.